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THE
CIVIL CODE

OF THE
STATE OF CALIFORNIA;

AS ENACTED IN 1872, AMENDED AT SUBSEQUENT SES-
SIONS, AND ADAPTED TO THE CONSTITUTION OF
1879, WITH REFERENCES TO THE DECISIONS
IN WHICH THE CODE WAS CITED, AND AN
APPENDIX OF GENERAL LAWS UPON
THE SUBJECTS EMBRACED IN
THE CODE.

COMPILED BY
ALBERT HART.

SAN FRANCISCO:
SUMNER WHITNEY AND COMPANY
1883.

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THE CIVIL CODE

OF THE

STATE OF CALIFORNIA.

IN FOUR DIVISIONS.



THE CIVIL CODE

OF THE STATE OF CALIFORNIA.

AN ACT TO ESTABLISH A CIVIL CODE.

[APPROVED, March 21st, 1872.]

The People of the State of California, represented in Senate and Assembly, do enact as follows :

TITLE OF THE ACT..

§ 1. THIS Act shall be known as THE CIVIL CODE OF THE STATE OF CALIFORNIA, and is in Four Divisions, as follows : —

- I. The First relating to Persons.
- II. The Second to Property.
- III. The Third to Obligations.
- IV. The Fourth contains General Provisions relating to the three Preceding Divisions.

PRELIMINARY PROVISIONS.

- SECTION** 2. When this Code takes effect.
3. Not retroactive.
 4. Rules of construction.
 5. Provisions similar to existing laws, how construed.
 6. Actions, &c., not affected.
 7. Holidays.
 8. Same.
 9. Business days.
 10. Computation of time.
 11. Certain acts not to be done on holidays.
 12. Joint authority construed.

SECTION 13. Words and phrases, how construed.

14. Certain terms defined.

15. Good faith, what constitutes. (Repealed.)

16. Degrees of care and diligence. (Repealed.)

17. Degrees of negligence. (Repealed.)

18. Notice, actual and constructive.

19. Constructive notice, when deemed.

20. Effect of repeal.

21. This Act, how cited.

§ 2. This Code takes effect at twelve o'clock noon on the first day of January, eighteen hundred and seventy-three.

§ 3. No part of it is retroactive, unless expressly so declared.

§ 4. The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this Code. The Code establishes the law of this State respecting the subjects to which it relates, and its provisions are to be liberally construed with a view to effect its objects and to promote justice.

§ 5. The provisions of this Code, so far as they are substantially the same as existing statutes or the common law, must be construed as continuations thereof, and not as new enactments.

§ 6. No action or proceeding commenced before this Code takes effect, and no right accrued, is affected by its provisions.

§ 7. Holidays, within the meaning of this Code, are: every Sunday, the first day of January, the twenty-second day of February, the thirtieth day of May, the fourth day of July, the twenty-fifth day of December, every day on which an election is held throughout the State, and every day appointed by the President of the United States or by the Governor of this State for a public fast, thanksgiving, or holiday. If the first day of January, the twenty-second day of February, the thirtieth day of May, the fourth day of July, or the twenty-fifth day of December, fall upon a Sunday, the Monday following is a holiday. [In effect April 9, 1880.]

§ 8. If the first of January, the twenty-second of February, the fourth of July, or the twenty-fifth of December falls upon Sunday, the Monday following is a holiday.

§ 9. All other days than those mentioned in the last two sections are to be deemed business days for all purposes.

§ 10. The time in which any act provided by law is to be done is computed by excluding the first day and including the last, unless the last day is a holiday, and then it is also excluded.

§ 11. Whenever any act of a secular nature, other than a work of necessity or mercy, is appointed by law or contract to be performed upon a particular day, which day falls upon a holiday, it may be performed upon the next business day with the same effect as if it had been performed upon the day appointed.

§ 12. Words giving a joint authority to three or more public officers or other persons are construed as giving such authority to a majority of them, unless it is otherwise expressed in the act giving the authority.

§ 13. Words and phrases are construed according to the context and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, or are defined in the succeeding section, are to be construed according to such peculiar and appropriate meaning or definition.

§ 14. Words used in this Code in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural the singular; the word person includes a corporation as well as a natural person; writing includes printing; oath includes affirmation or declaration; and every mode of oral statement under oath or affirmation is embraced by the term "testify," and every written one in the term "depose;" signature or subscription includes mark, when the person cannot write, his name being written near it, and written by a person who writes his own name as a witness. The following words also have in this Code the signification attached to them in this section, unless otherwise apparent from the context:

1. The word "property" includes property real and personal;

2. The words "real property" are coextensive with lands, tenements, and hereditaments;

3. The words "personal property" include money, goods, chattels, things in action, and evidences of debt;

4. The word "month" means a calendar month, unless otherwise expressed; and,

5. The word "will" includes codicils. [In effect July 1, 1876.]

54 Cal. 109; 58 Cal. 357.

§§ 15, 16, 17 of said Code are repealed. [In effect July 1, 1874.]

§ 18. Notice is:

1. Actual — which consists in express information of a fact;
or,

2. Constructive — which is imputed by law.

§ 19. Every person who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact, has constructive notice of the fact itself in all cases in which, by prosecuting such inquiry, he might have learned such fact. [In effect July, 1874.]

54 Cal. 23, 352, 552; 55 Cal. 117, 161, 529; 57 Cal. 323, 399.

§ 20. No statute, law, or rule is continued in force because it is consistent with the provisions of this Code on the same subject; but in all cases provided for by this Code, all statutes, laws, and rules heretofore in force in this State, whether consistent or not with the provisions of this Code, unless expressly continued in force by it, are repealed or abrogated.

This repeal or abrogation does not revive any former law heretofore repealed, nor does it affect any right already existing or accrued, or any action or proceeding already taken, except as in this Code provided.

§ 21. This act, whenever cited, enumerated, referred to, or amended, may be designated simply as "THE CIVIL CODE," adding, when necessary, the number of the section.

DIVISION FIRST.

PART I. PERSONS, §§ 25-42.

II. PERSONAL RIGHTS, §§ 43-50.

III. PERSONAL RELATIONS, §§ 55-276.

IV. CORPORATIONS, §§ 283-648.



PART I.

PERSONS.

- Section 25.** Minors, who are.
26. Periods of minority, how calculated.
27. Adults, who are.
28. Status of minors, how changed. (Repealed.)
29. Unborn child.
30. Persons made adults by other States, considered as such in this State, when domiciled herein. (Repealed.)
31. Minors by the laws of other State or country, how considered in this State. (Repealed.)
32. Custody of minors.
33. Minors cannot give a delegation of power.
34. Contracts of minors made; disaffirmed.
35. When minor may disaffirm.
36. Cannot disaffirm contract for necessaries.
37. Nor certain obligations.
38. Contracts of persons without understanding.
39. Contracts of other insane persons.
40. Powers of persons whose incapacity has been adjudged.
41. Minors liable for wrongs, but not liable for exemplary damages.
42. Minors may enforce their rights.

§ 25. MINORS are:

1. Males under twenty-one years of age;
2. Females under eighteen years of age.

§ 26. The periods specified in the preceding section must be calculated from the first minute of the day on which persons are born to the same minute of the corresponding day completing the period of minority.

§ 27. All other persons are adults.

§ 28 of said Code is repealed. [In effect July 1, 1874.]

§ 29. A child conceived, but not yet born, is to be deemed an existing person, so far as may be necessary for its interests in the event of its subsequent birth.

§§ 30, 31 of said Code are repealed. [In effect July 1, 1874.]

§ 32. The custody of minors and persons of unsound mind is regulated by Part III. of this division.

§ 33. A minor cannot give a delegation of power, nor, under the age of eighteen, make a contract relating to real property, or any interest therein, or relating to any personal property not in his immediate possession or control. [In effect July 1, 1874.]

§ 34. A minor may make any other contract than as above specified, in the same manner as an adult, subject only to his power of disaffirmance under the provisions of this title, and subject to the provisions of the Titles on Marriage, and on Master and Servant. [In effect July 1, 1874.]

§ 35. In all cases other than those specified in sections thirty-six and thirty-seven, the contract of a minor, if made whilst he is under the age of eighteen, may be disaffirmed by the minor himself, either before his majority or within a reasonable time afterwards; or, in case of his death within that period, by his heirs or personal representatives; and if the contract be made by the minor whilst he is over the age of eighteen, it may be disaffirmed in like manner upon restoring the consideration to the party from whom it was received, or paying its equivalent. [In effect July 1, 1874.]

§ 36. A minor cannot disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for his support, or that of his family, entered into by him when not under the care of a parent or guardian able to provide for him or them. [In effect July 1, 1874.]

§ 37. A minor cannot disaffirm an obligation, otherwise valid, entered into by him under the express authority or direction of a statute.

§ 38. A person entirely without understanding has no power to make a contract of any kind, but he is liable for the reasonable value of things furnished to him necessary for his support or the support of his family. [In effect July 1, 1874.]

§ 39. A conveyance or other contract of a person of unsound mind, but not entirely without understanding, made before his incapacity has been judicially determined, is subject to rescission, as provided in the Chapter on Rescission of this Code. [In effect July 1, 1874.]

§ 40. After his incapacity has been judicially determined, a person of unsound mind can make no conveyance or other contract, nor delegate any power, nor waive any right, until his restoration to capacity. But a certificate from the medical superintendent or resident physician of the insane asylum to which such person may have been committed, showing that such person had been discharged therefrom cured and restored to reason, shall establish the presumption of legal capacity in such person from the time of such discharge. [In effect May 29, 1878.]

67 Cal. 531.

§ 41. A minor, or person of unsound mind, of whatever degree, is civilly liable for a wrong done by him, but is not liable in exemplary damages unless at the time of the act he was capable of knowing that it was wrongful.

§ 42. A minor may enforce his rights by civil action, or other legal proceedings, in the same manner as a person of full age, except that a guardian must conduct the same.

PART II.

PERSONAL RIGHTS.

SECTION 43. General personal rights.

44. Defamation, what.

45. Libel, what.

46. Slander, what.

47. What communications are privileged.

48. Malice not inferred.

49. Protection to personal relations.

50. Right to use force.

§ 43. BESIDES the personal rights mentioned or recognized in the POLITICAL CODE, every person has, subject to the qualifications and restrictions provided by law, the right of protection from bodily restraint or harm, from personal insult, from defamation, and from injury to his personal relations.

See Pol. Code, §§ 37, 50-60; Penal Code, §§ 346-349.

§ 44. Defamation is effected by :

1. Libel;
2. Slander.

§ 45. Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation.

§ 46. Slander is a false and unprivileged publication other than libel, which :

1. Charges any person with crime, or with having been indicted, convicted, or punished for crime;
2. Imputes in him the present existence of an infectious, contagious, or loathsome disease;
3. Tends directly to injure him in respect to his office, pro-

fession, trade, or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade, or business that has a natural tendency to lessen its profit ;

4. Imputes to him impotence or a want of chastity ; or,
5. Which, by natural consequence, causes actual damage.

§ 47. A privileged publication is one made :

1. In the proper discharge of an official duty ;
2. In any legislative or judicial proceeding, or in any other official proceeding authorized by law ;
3. In a communication, without malice, to a person interested therein, by one who is also interested, or by one who stands in such a relation to the person interested as to afford a reasonable ground for supposing the motive for the communication innocent, or who is requested by the person interested to give the information ;
4. By a fair and true report, without malice, of a judicial, legislative, or other public official proceeding, or of anything said in the course thereof. [In effect July 1, 1874.]

§ 48. In the cases provided for in Subdivisions 3 and 4 of the preceding section, malice is not inferred from the communication or publication.

§ 49. The rights of personal relation forbid :

1. The abduction of a husband from his wife, or of a parent from his child ;
2. The abduction or enticement of a wife from her husband, of a child from a parent or from a guardian entitled to its custody, or of a servant from his master ;
3. The seduction of a wife, daughter, orphan sister, or servant ;
4. Any injury to a servant which affects his ability to serve his master.

§ 50. Any necessary force may be used to protect from wrongful injury the person or property of one's self, or of a wife, husband, child, parent, or other relative, or member of one's family, or of a ward, servant, master, or guest.

[In effect July 1, 1874.]

Lawful resistance to the commission of offences. See Penal Code §§ 602-604.

PART III.

PERSONAL RELATIONS.

- TITLE I. MARRIAGE, §§ 55-181.**
- II. PARENT AND CHILD, §§ 193-230.
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TITLE I. MARRIAGE.

- CHAPTER I. THE CONTRACT OF MARRIAGE, §§ 55-80.**
- II. DIVORCE, §§ 82-148.
- III. HUSBAND AND WIFE, §§ 155-181.

CHAPTER I. THE CONTRACT OF MARRIAGE.

- ARTICLE I. VALIDITY OF MARRIAGE, §§ 55-63.**
- II. AUTHENTICATION OF MARRIAGE, §§ 68-78.
- III. JUDICIAL DETERMINATION OF VOID MARRIAGES, § 80.

ARTICLE I.

VALIDITY OF MARRIAGE.

- SECTION 55.** What constitutes marriage.
- 56. Minors capable of contracting marriage.
- 57. Marriage, how manifested and proved.
- 58. Certain marriages voidable.
- 59. Incompetency of parties to.
- 60. Of whites and negroes or mulattoes, void.
- 61. Polygamy forbidden.
- 62. Released from marriage contract, when.
- 63. Marriages contracted without the State.

§ 55. MARRIAGE is a personal relation arising out of a civil contract, to which the consent of parties capable of making

it is necessary. Consent alone will not constitute marriage ; it must be followed by a solemnization, or by a mutual assumption of marital rights, duties, or obligations.

Bigamy is defined in Penal Code, § 281, and punished by §§ 283-4.

§ 56. Any unmarried male of the age of eighteen years or upwards, and any unmarried female of the age of fifteen years or upwards, and not otherwise disqualified, are capable of consenting to and consummating marriage.

§ 57. Consent to and subsequent consummation of marriage may be manifested in any form, and may be proved under the same general rules of evidence as facts in other cases.

§ 58. If either party to a marriage be incapable from physical causes of entering into the marriage state, or if the consent of either be obtained by fraud or force, the marriage is voidable. [In effect July 1, 1874.]

Penalty for false personation in marital relations. Penal Code, § 528.

§ 59. Marriages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as the whole blood, and between uncles and nieces or aunts and nephews, are incestuous, and void from the beginning, whether the relationship is legitimate or illegitimate.

Penalty for incestuous marriages. Penal Code, §§ 285, 359.

§ 60. All marriages of white persons with negroes or malattoes are illegal and void.

§ 61. A subsequent marriage contracted by any person during the life of a former husband or wife of such person, with any person other than such former husband or wife, is illegal and void from the beginning, unless :

1. The former marriage has been annulled or dissolved ;

2. Unless such former husband or wife was absent, and not known to such person to be living for the space of five successive years immediately preceding such subsequent marriage, or was generally reputed and was believed by such person to be dead at the time such subsequent marriage was contracted ; in either of which cases the subsequent marriage is

valid until its nullity is adjudged by a competent tribunal.
[In effect July 1, 1874.]

Penalty for bigamy. Penal Code, §§ 283-84; exceptions, § 282.
58 Cal. 219.

§ 62. Neither party to a contract to marry is bound by a promise made in ignorance of the other's want of personal chastity, and either is released therefrom by unchaste conduct on the part of the other, unless both parties participate therein.
[In effect July 1, 1874.]

§ 63. All marriages contracted without this State, which would be valid by the laws of the country in which the same were contracted, are valid in this State.

ARTICLE II

AUTHENTICATION OF MARRIAGE.

SECTION 68. Marriage, how solemnized.

69. Marriage license.

70. By whom solemnized.

71. No particular form of solemnization.

72. Substantial requisites.

73. Certificate of marriage.

74. Certificate to parties and recorder.

75. Declaration of marriage, how made.

76. Declaration to contain what.

77. To be acknowledged and recorded.

78. Action between the parties to determine validity.

79. Persons who may be married without license.

§ 68. Marriage must be licensed, solemnized, authenticated, and recorded as provided in this article; but non-compliance with its provisions does not invalidate any lawful marriage.

§ 69. All persons about to be joined in marriage must first obtain a license therefor from the county clerk of the county in which the marriage is to be celebrated, showing:

1. The identity of the parties;
2. Their real and full names and places of residence;
3. Their ages.

4. If the male be under the age of twenty-one, or the female under the age of eighteen years, the consent of the father, mother, or guardian, or of one having the charge of such person, if any such be given; or that such non-aged person has been previously, but is not at the time, married. For the purpose of ascertaining these facts, the clerk is authorized to

examine parties and witnesses on oath, and to receive affidavits, and he must state such facts in the license. If the male be under the age of twenty-one years, or the female be under the age of eighteen, and such person has not been previously married, no license shall be issued by the clerk, unless the consent in writing of the parents of the person under age, or of one of such parents, or of his or her guardian, or of one having charge of such person, be presented to him; and such consent shall be filed by the clerk, provided that the said clerk shall not issue a license authorizing the marriage of a white person with a negro, mulatto, or Mongolian. [In effect April 5, 1880.]

§ 70. Marriage may be solemnized by either a justice of the Supreme Court, judge of the Superior Court, justice of the peace, priest, or minister of the gospel of any denomination. [In effect April 5, 1880.]

Penalty for solemnization of illegal marriage. Penal Code, § 359.

§ 71. No particular form for the ceremony of marriage is required, but the parties must declare, in the presence of the person solemnizing the marriage, that they take each other as husband and wife.

§ 72. The person solemnizing a marriage must first require the presentation of the marriage license; and if he has any reason to doubt the correctness of its statement of facts, he must first satisfy himself of its correctness, and for that purpose he may administer oaths and examine the parties and witnesses in like manner as the county clerk does before issuing the license. [In effect July 1, 1874.]

§ 73. The person solemnizing a marriage must make, sign, and indorse upon, or attach to, the license, a certificate, showing:

1. The fact, time, and place of solemnization; and
2. The names and places of residence of one or more witnesses to the ceremony. [In effect July 1, 1874.]

Penalty for false return. Penal Code, § 360.

§ 74. He must, at the request of, and for either party, make a certified copy of the license and certificate, and file the originals with the county recorder within thirty days after he marriage.

Recorder must record. Polit. Code, § 4235.

§ 75. Persons married without the solemnization provided for in section 70 must jointly make a declaration of marriage, substantially showing :

1. The names, ages, and residences of the parties ;
2. The fact of marriage ;
3. The time of marriage ;
4. That the marriage has not been solemnized.

§ 76. If no record of the solemnization of a marriage heretofore contracted be known to exist, the parties may join in a written declaration of such marriage, substantially showing :

1. The names, ages, and residences of the parties ;
 2. The fact of marriage ;
 3. That no record of such marriage is known to exist
- Such declaration must be subscribed by the parties and attested by at least three witnesses. [In effect July 1, 1874.]

See Penal Code, § 860.

§ 77. Declarations of marriage must be acknowledged and recorded in like manner as grants of real property.

See Polt. Code, § 4235.

§ 78. If either party to any marriage denies the same, or refuses to join in a declaration thereof, the other may proceed, by action in the Superior Court, to have the validity of the marriage determined and declared. [In effect February 15, 1883.]

§ 79. When unmarried persons, not minors, have been living together as man and wife, they may, without a license, be married by any clergyman. A certificate of such marriage must, by the clergyman, be made and delivered to the parties, and recorded upon the records of the church of which the clergyman is a representative. No other record need be made. [In effect February 6, 1878.]

ARTICLE III.

JUDICIAL DETERMINATION OF VOID MARRIAGES.

§ 80. Either party to an incestuous or void marriage may proceed by action in the Superior Court, to have the same so declared. [In effect April 5, 1880.]

CHAPTER II.

DIVORCE.

- ARTICLE I. NULLITY, §§ 82-86.**
II. DISSOLUTION, §§ 90-107.
III. CAUSES FOR DENYING DIVORCE, §§ 111-120.
IV. GENERAL PROVISIONS, §§ 126-148

ARTICLE I.

NULLITY.

SECTION 82. Cases where marriage may be annulled.

82. Action to obtain decree of nullity in certain cases, when and by whom commenced.
84. Children of annulled marriage.
85. Custody of children.
86. Effect of judgment of nullity.

§ 82. A marriage may be annulled for any of the following causes, existing at the time of the marriage:

1. That the party in whose behalf it is sought to have the marriage annulled was under the age of legal consent, and such marriage was contracted without the consent of his or her parents or guardian, or person having charge of him or her; unless, after attaining the age of consent, such party for any time freely cohabited with the other as husband or wife;

2. That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force;

3. That either party was of unsound mind, unless such party, after coming to reason, freely cohabit with the other as husband or wife;

4. That the consent of either party was obtained by fraud, unless such party afterward, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife;

5. That the consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as husband or wife;

6. That either party was, at the time of marriage, physically incapable of entering into the married state, and such incapacity continues, and appears to be incurable. [In effect July 1

§ 83. An action to obtain a decree of nullity of marriage for causes mentioned in the preceding section, must be commenced within the periods and by the parties as follows :

1. For causes mentioned in subdivision one : by the party to the marriage who was married under the age of legal consent, within four years after arriving at the age of consent ; or by a parent, guardian, or other person having charge of such non-aged male or female, at any time before such married minor has arrived at the age of legal consent ;

2. For causes mentioned in subdivision two : by either party during the life of the other, or by such former husband or wife ;

3. For causes mentioned in subdivision three : by the party injured, or relative or guardian of the party of unsound mind, at any time before the death of either party ;

4. For causes mentioned in subdivision four : by the party injured, within four years after the discovery of the facts constituting the fraud ;

5. For causes mentioned in subdivision five : by the injured party, within four years after the marriage ;

6. For causes mentioned in subdivision six : by the injured party, within four years after the marriage. [In effect July 1, 1874.]

§ 84. Where a marriage is annulled on the ground that a former husband or wife was living, or on the ground of insanity, children begotten before the judgment are legitimate, and succeed to the estate of both parents.

§ 85. The court must award the custody of the children of a marriage annulled on the ground of fraud or force to the innocent parent, and may also provide for their education and maintenance out of the property of the guilty party.

§ 86. A judgment of nullity of marriage rendered is conclusive only as against the parties to the action and those claiming under them.

ARTICLE II.

DISSOLUTION OF MARRIAGE.

SECTION 90. Marriage, how dissolved.

91. Divorce, what.

92. Causes for divorce.

SECTION 98. Adultery defined.

- 94. Extreme cruelty, what.
- 95. Desertion, what.
- 96. Desertion, how manifested.
- 97. In case of stratagem or fraud, who commits desertion.
- 98. In case of cruelty, where one party leaves the other, who commits desertion.
- 99. Separation by consent not desertion.
- 100. Separation and intent to desert not always coincident.
- 101. Consent to separate revocable.
- 102. Desertion, how cured. Effect of refusing condonation.
- 103. Wife must abide by husband's selection of home, or it is desertion on her part.
- 104. If the place is unfit, and wife refuses to conform, it is desertion by the husband.
- 105. Wilful neglect, what.
- 106. Habitual intemperance, what.
- 107. Habitual intemperance for one year.

§ 90. Marriage is dissolved only :

- 1. By the death of one of the parties ; or,
- 2. By the judgment of a court of competent jurisdiction decreeing a divorce of the parties. [In effect July 1, 1874.]

§ 91. The effect of a judgment decreeing a divorce is to restore the parties to the state of unmarried persons [In effect July 1, 1874.]

§ 92. Divorces may be granted for any of the following causes :

- 1. Adultery ;
- 2. Extreme cruelty ;
- 3. Wilful desertion ;
- 4. Wilful neglect ;
- 5. Habitual intemperance ;
- 6. Conviction of felony. [In effect July 1, 1874.]

51 Cal. 544.

§ 93. Adultery is the voluntary sexual intercourse of a married person with a person other than the offender's husband or wife.

Open and notorious adultery is punished by Act of May 15, 1872.

§ 94. Extreme cruelty is the infliction of grievous bodily injury or grievous mental suffering upon the other by one party to the marriage.

§ 95. Wilful desertion is the voluntary separation of one of the married parties from the other with intent to desert.

51 Cal. 544.

§ 96. Persistent refusal to have reasonable matrimonial in-

tercourse as husband and wife, when health or physical condition does not make such refusal reasonably necessary, or the refusal of either party to dwell in the same house with the other party, when there is no just cause for such refusal, is desertion.

§ 97. When one party is induced, by the stratagem or fraud of the other party, to leave the family dwelling-place, or to be absent, and during such absence the offending party departs with intent to desert the other, it is desertion by the party committing the stratagem or fraud, and not by the other.

§ 98. Departure or absence of one party from the family dwelling-place, caused by cruelty or threats of bodily harm, from which danger would be reasonably apprehended from the other, is not desertion by the absent party, but it is desertion by the other party.

§ 99. Separation by consent with or without the understanding that one of the parties will apply for a divorce, is not desertion.

§ 100. Absence or separation, proper in itself, becomes desertion whenever the intent to desert is fixed during such absence or separation. [In effect July 1, 1874.]

§ 101. Consent to a separation is a revocable act, and if one of the parties afterwards, in good faith, seeks a reconciliation and restoration, but the other refuses it, such refusal is desertion.

§ 102. If one party deserts the other, and before the expiration of the statutory period required to make the desertion a cause of divorce, returns and offers in good faith to fulfil the marriage contract, and solicits condonation, the desertion is cured. If the other party refuse such offer and condonation, the refusal shall be deemed and treated as desertion by such party from the time of refusal. [In effect July 1, 1874.]

§ 103. The husband may choose any reasonable place or mode of living, and if the wife does not conform thereto, it is desertion.

§ 104. If the place or mode of living selected by the hus

band is unreasonable and grossly unfit, and the wife does not conform thereto, it is desertion on the part of the husband from the time her reasonable objections are made known to him.

§ 105. Wilful neglect is the neglect of the husband to provide for his wife the common necessities of life, he having the ability to do so; or it is the failure to do so by reason of idleness, profligacy, or dissipation.

51 Cal. 544.

§ 106. Habitual intemperance is that degree of intemperance from the use of intoxicating drinks which disqualifies the person a great portion of the time from properly attending to business, or which would reasonably inflict a course of great mental anguish upon the innocent party.

§ 107. Wilful desertion, wilful neglect, or habitual intemperance must continue for one year before either is a ground for divorce.

ARTICLE III.

CAUSES FOR DENYING DIVORCE.

- SECTION 111.** Divorces denied, on showing what.
- 112. Connivance, what.
 - 113. Corrupt consent, how manifested.
 - 114. Collusion, what.
 - 115. Condonation, what.
 - 116. Requisites to condonation.
 - 117. Condonation implies what.
 - 118. Evidence of condonation.
 - 119. Condonation, when operates to bar divorce.
 - 120. Concealment of facts in certain cases makes condonation void.
 - 121. Condonation, how revoked.
 - 122. Recrimination, what.
 - 123. Condonation in a recriminatory defence a bar to such defence, when.
 - 124. Divorces denied, when.
 - 125. Lapse of time establishes certain presumptions.
 - 126. Presumptions may be rebutted.
 - 127. Limitation of time.
 - 128. Divorces granted, when.
 - 129. Proof of actual residence required. Presumptions do not apply.
 - 130. Divorce not to be granted by default, &c.

§ 111. Divorces must be denied upon showing:

- 1. Connivance; or

2. Collusion ; or,
3. Condonation ; or,
4. Recrimination ; or,
5. Limitation and lapse of time.

§ 112. Connivance is the corrupt consent of one party to the commission of the acts of the other, constituting the cause of divorce.

§ 113. Corrupt consent is manifested by passive permission, with intent to connive at or actively procure the commission of the acts complained of.

§ 114. Collusion is an agreement between husband and wife that one of them shall commit, or appear to have committed, or to be represented in court as having committed, acts constituting a cause of divorce, for the purpose of enabling the other to obtain a divorce.

§ 115. Condonation is the conditional forgiveness of a matrimonial offence constituting a cause of divorce.

§ 116. The following requirements are necessary to condonation :

1. A knowledge on the part of the condoner of the facts constituting the cause of divorce ;
2. Reconciliation and remission of the offence by the injured party ;
3. Restoration of the offending party to all marital rights.

§ 117. Condonation implies a condition subsequent ; that the forgiving party must be treated with conjugal kindness.

§ 118. Where the cause of divorce consists of a course of offensive conduct, or arises, in cases of cruelty, from successive acts of ill-treatment which may, aggregately, constitute the offence, cohabitation, or passive endurance, or conjugal kindness, shall not be evidence of condonation of any of the acts constituting such cause, unless accompanied by an express agreement to condone. [In effect July 1, 1874.]

§ 119. In cases mentioned in the last section, condonation can be made only after the cause of divorce has become complete, as to the acts complained of. [In effect July 1, 1874.]

§ 120. A fraudulent concealment by the condonee of facts constituting a different cause of divorce from the one condoned, and existing at the time of condonation, avoids such condonation.

§ 121. Condonation is revoked, and the original cause of divorce revived:

1. When the condonee commits acts constituting a like or other cause of divorce; or,

2. When the condonee is guilty of great conjugal unkindness, not amounting to a cause of divorce, but sufficiently habitual and gross to show that the conditions of condonation had not been accepted in good faith, or not fulfilled.

§ 122. Recrimination is a showing by the defendant of any cause of divorce against the plaintiff, in bar of the plaintiff's cause of divorce.

§ 123. Condonation of a cause of divorce, shown in the answer as a recriminatory defence, is a bar to such defence, unless the condonation be revoked, as provided in section one hundred and twenty-one, or two years have elapsed after the condonation, and before the accruing or completion of the cause of divorce against which the recrimination is shown. [In effect July 1, 1874.]

§ 124. A divorce must be denied:

1. When the cause is adultery, and the action is not commenced within two years after the commission of the act of adultery, or after its discovery by the injured party; or,

2. When the cause is conviction of felony, and the action is not commenced before the expiration of two years after a pardon, or the termination of the period of sentence;

3. In all other cases when there is an unreasonable lapse of time before the commencement of the action. [In effect July 1, 1874.]

§ 125. Unreasonable lapse of time is such a delay in commencing the action as establishes the presumption that there has been connivance, collusion, or condonation of the offence, full acquiescence in the same, with intent to continue the marriage relation, notwithstanding the commission of such offence.

§ 126. The presumptions arising from lapse of time may

be rebutted by showing reasonable grounds for the delay in commencing the action.

§ 127. There are no limitations of time for commencing actions for divorce, except such as are contained in section 124.

§ 128. A divorce must not be granted unless the plaintiff has been a resident of the State for six months next preceding the commencement of the action.

§ 129. In actions for divorce the presumption of law, that the domicile of the husband is the domicile of the wife, does not apply. After separation, each may have a separate domicile, depending for proof upon actual residence, and not upon legal presumptions.

§ 130. No divorce can be granted upon the default of the defendant, or upon the uncorroborated statement, admission, or testimony of the parties, or upon any statement or finding of fact made by a referee; but the court must, in addition to any statement or finding of the referee, require proof of the facts alleged, and such proof, if not taken before the court, must be upon written questions and answers. [In effect July 1, 1874.] 49 Cal. 94.

ARTICLE IV.

GENERAL PROVISIONS.

~~Section~~ 136. Relief may be adjudged, where separation is denied.

137. Expense of action, alimony.

138. Orders respecting custody of children.

139. Support of wife and children on divorce or separation granted to wife.

140. Security for maintenance and alimony.

141. Court shall resort to what, in executing certain sections.

142. If wife has sufficient support, court may withhold allowance.

143. Community and separate property may be subjected to support and educate children.

144. Legitimacy of issue.

145. Same.

146. Disposition of community property on divorce.

147. How disposed of when divorce rendered on adultery.

148. Such an action subject to revision on appeal.

§ 136. Though judgment of divorce is denied, the court may, in an action for divorce, provide for the maintenance of the wife and her children, or any of them, by the husband.

§ 137. While an action for divorce is pending the court may, in its discretion, require the husband to pay as alimony any money necessary to enable the wife to support herself or her children, or to prosecute or defend the action. When the husband wilfully deserts the wife, she may, without applying for a divorce, maintain in the Superior Court an action against him for permanent support and maintenance of herself or of herself and children. During the pendency of such action the court may, in its discretion, require the husband to pay as alimony any money necessary for the prosecution of the action and for support and maintenance, and executions may issue therefor in the discretion of the court. The final judgment in such action may be enforced by the court by such order or orders as in its discretion it may from time to time deem necessary, and such order or orders may be varied, altered, or revoked at the discretion of the court. [In effect April 5, 1880.]

55 Cal. 323.

§ 138. In an action for divorce the court may, before or after judgment, give such direction for the custody, care, and education of the children of the marriage as may seem necessary or proper, and may at any time vacate or modify the same.

§ 139. Where a divorce is granted for an offence of the husband, the court may compel him to provide for the maintenance of the children of the marriage, and to make such suitable allowance to the wife for her support, during her life, or for a shorter period, as the court may deem just, having regard to the circumstances of the parties respectively; and the court may, from time to time, modify its orders in these respects.

52 Cal. 384.

§ 140. The court may require the husband to give reasonable security for providing maintenance or making any payments required under the provisions of this chapter, and may enforce the same by the appointment of a receiver, or by any other remedy applicable to the case.

§ 141. In executing the five preceding sections the court must resort:

1. To the community property; then,
2. To the separate property of the husband.

§ 142. When the wife has either a separate estate, or there is community property sufficient to give her alimony

or a proper support, the court, in its discretion, may withhold any allowance to her out of the separate property of the husband.

§ 143. The community property and the separate property may be subjected to the support and education of the children in such proportions as the court deems just.

§ 144. When a divorce is granted for the adultery of the husband, the legitimacy of children of the marriage begotten of the wife before the commencement of the action is not affected.

§ 145. When a divorce is granted for the adultery of the wife, the legitimacy of children begotten of her before the commission of the adultery is not affected; but the legitimacy of other children of the wife may be determined by the court, upon the evidence in the case.

§ 146. In case of the dissolution of the marriage by the decree of a court of competent jurisdiction, the community property and the homestead shall be assigned as follows:

1. If the decree be rendered on the ground of adultery or extreme cruelty, the community property shall be assigned to the respective parties in such proportions as the court, from all the facts of the case, and the condition of the parties may deem just.

2. If the decree be rendered on any other ground than that of adultery or extreme cruelty, the community property shall be equally divided between the parties.

3. If a homestead has been selected from the community property, it may be assigned to the innocent party, either absolutely, or for a limited period, subject, in the latter case, to the future disposition of the court, or it may, in the discretion of the court, be divided, or be sold and the proceeds divided.

4. If a homestead has been selected from the separate property of either, it shall be assigned to the former owner of such property, subject to the power of the court to assign it for a limited period to the innocent party. [In effect July 1, 1874.]

47 Cal. 146.

§ 147. The court, in rendering a decree of divorce, must make such order for the disposition of the community property, and of the homestead, as in this chapter provided, and, whenever necessary for that purpose, may order a partition of

sale of the property and a division or other disposition of the proceeds. [In effect July 1, 1874.]

47 Cal. 147.

§ 148. The disposition of the community property, and of the homestead, as above provided, is subject to revision on appeal in all particulars, including those which are stated to be in the discretion of the court. [In effect July 1, 1874.]

CHAPTER III.

HUSBAND AND WIFE.

- Section 155** Mutual obligations of husband and wife.
 156. Rights of husband, as head of family.
 157. In other respects their interests separate.
 158. Husband and wife may make contracts.
 159. How far may impair their legal obligations.
 160. Consideration for agreement of separation.
 161. May be joint tenants, &c.
 162. Separate property of the wife.
 163. Separate property of the husband.
 164. Community property.
 165. Inventory of separate property of wife.
 166. Filing inventory notice of wife's title.
 167. Wife not competent to contract for payment of money.
 168. Earnings of wife not liable for debts of husband.
 169. Earnings of wife, when living separate, separate property.
 170. Liability for debts of wife contracted before marriage.
 171. Wife's property not liable for debts of the husband, but liable for her own debts.
 172. Power of the husband over community property.
 173. Courtesy and dower not allowed.
 174. Support of wife.
 175. Husband not liable when abandoned by wife.
 176. When wife must support husband.
 177. Rights of husband and wife governed by what.
 178. Marriage settlement contracts, how executed.
 179. To be acknowledged and recorded.
 180. Effect of recording.
 181. Minors may make marriage settlements.

§ 155. Husband and wife contract towards each other obligations of mutual respect, fidelity, and support.

§ 156. The husband is the head of the family. He may choose any reasonable place or mode of living, and the wife must conform thereto.

§ 157. Neither husband nor wife has any interest in the property of the other, but neither can be excluded from the other's dwelling.

§ 158. Either husband or wife may enter into any engagement or transaction with the other, or with any other person, respecting property, which either might if unmarried; subject, in transactions between themselves, to the general rules which control the actions of persons occupying confidential relations with each other, as defined by the Title on Trusts.

52 Cal. 335; 53 Cal. 459; 54 Cal. 178; 55 Cal. 15, 52, 58.

§ 159. A husband and wife cannot, by any contract with each other, alter their legal relations, except as to property, and except that they may agree, in writing, to an immediate separation, and may make provision for the support of either of them and of their children during such separation. [In effect July 1, 1874.]

§ 160. The mutual consent of the parties is a sufficient consideration for such an agreement as is mentioned in the last section.

§ 161. A husband and wife may hold property as joint tenants, tenants in common, or as community property.

53 Cal. 459.

§ 162. All property of the wife, owned by her before marriage, and that acquired afterwards by gift, bequest, devise, or descent, with the rents, issues, and profits thereof, is her separate property. The wife may, without the consent of her husband, convey her separate property.

53 Cal. 459; 55 Cal. 56.

§ 163. All property owned by the husband before marriage, and that acquired afterwards by gift, bequest, devise, or descent, with the rents, issues, and profits thereof, is his separate property.

57 Cal. 257, 320.

§ 164. All other property acquired after marriage, by either husband or wife, or both, is community property.

57 Cal. 320.

§ 165. A full and complete inventory of the separate personal property of the wife may be made out and signed by her, acknowledged or proved in the manner required by law for the acknowledgment or proof of a grant of real property by an unmarried woman, and recorded in the office of the recorder of the county in which the parties reside.

§ 166. The filing of the inventory in the recorder's office is notice and *prima facie* evidence of the title of the wife. [In effect July 1, 1874.]

§ 167. The property of the community is not liable for the contracts of the wife, made after marriage, unless secured by a pledge or mortgage thereof executed by the husband. [In effect July 1, 1874.]

54 Cal. 178.

§ 168. The earnings of the wife are not liable for the debts of the husband.

53 Cal. 459.

§ 169. The earnings and accumulations of the wife, and of her minor children living with her or in her custody, while she is living separate from her husband, are the separate property of the wife.

53 Cal. 459.

§ 170. The separate property of the husband is not liable for the debts of the wife contracted before the marriage.

§ 171. The separate property of the wife is not liable for the debts of her husband, but is liable for her own debts, contracted before or after marriage.

§ 172. The husband has the management and control of the community property, with the like absolute power of disposition (other than testamentary) as he has of his separate estate.

58 Cal. 116.

§ 173. No estate is allowed the husband as tenant by courtesy upon the death of his wife, nor is any estate in dower allotted to the wife upon the death of her husband.

§ 174. If the husband neglect to make adequate provision for the support of his wife, except in the cases mentioned in the next section, any other person may, in good faith, supply her with articles necessary for her support, and recover the reasonable value thereof from the husband. [In effect July 1, 1874.]

§ 174. If the husband neglect to make adequate provision for the support of his wife, except in the cases mentioned in the next section, any other person may, in good faith, supply her with articles necessary for her support, and recover the reasonable value thereof from the husband. [In effect July 1, 1874.]

§ 175. A husband abandoned by his wife is not liable for her support until she offers to return, unless she was justified, by his misconduct, in abandoning him; nor is he liable for her support when she is living separate from him, by agreement, unless such support is stipulated in the agreement. [In effect July 1, 1874.]

54 Cal. 397.

§ 176. The wife must support the husband, when he has not deserted her, out of her separate property, when he has no

separate property, and there is no community property, and he is unable, from infirmity, to support himself. [In effect July 1, 1874.]

§ 177. The property rights of husband and wife are governed by this chapter, unless there is a marriage settlement containing stipulations contrary thereto.

§ 178. All contracts for marriage settlements must be in writing, and executed and acknowledged or proved in like manner as a grant of land is required to be executed and acknowledged or proved.

§ 179. When such contract is acknowledged or proved, it must be recorded in the office of the recorder of every county in which any real estate may be situated which is granted or affected by such contract.

Recorder must record. Pol. Code, § 4235.

§ 180. The recording or non-recording of such contract has a like effect as the recording or non-recording of a grant of real property.

§ 181. A minor capable of contracting marriage may make a valid marriage settlement.

Married women may become sole traders, &c. Code Civ. Proc. § 1811-1821.

TITLE II.

PARENT AND CHILD.

CHAPTER I. BY BIRTH, §§ 193-215.

II. BY ADOPTION, §§ 221-230.

CHAPTER I.

CHILDREN BY BIRTH.

SECTION 193. Legitimacy of children born in wedlock.

194. Legitimacy of children born out of wedlock.

195. Who may dispute the legitimacy of a child.

196. Obligation of parents for the support and education of their children.

197. Custody of legitimate child

- Section 198.** Husband and wife living separate, neither to have superior right to custody of children.
- 199.** When husband or wife may bring action for the exclusive control of children. Decree in such cases.
- 200.** Custody of an illegitimate child.
- 201.** Allowance to parent.
- 202.** Parent cannot control the property of child.
- 203.** Remedy for parental abuse.
- 204.** When parental authority ceases.
- 205.** Remedy when a parent dies without providing for the support of his child.
- 206.** Reciprocal duties of parents and children in maintaining each other.
- 207.** When a parent is liable for necessities supplied to a child.
- 208.** When a parent is not liable for support furnished his child.
- 209.** Husband not bound for the support of his wife's children by a former marriage.
- 210.** Compensation and support of adult child.
- 211.** Parent may relinquish services and custody of child.
- 212.** Wages of minors.
- 213.** Right of parent to determine the residence of child.
- 214.** Wife in certain cases may obtain custody of minor children.
- 215.** Child legitimized by marriage of parents

§ 193. All children born in wedlock are presumed to be legitimate.

§ 194. All children of a woman who has been married, born within ten months after the dissolution of the marriage, are presumed to be legitimate children of that marriage. [In effect July 1, 1874.]

§ 195. The presumption of legitimacy can be disputed only by the husband or wife, or the descendant of one or both of them. Illegitimacy, in such case, may be proved like any other fact.

§ 196. The parent entitled to the custody of a child must give him support and education suitable to his circumstances. If the support and education which the father of a legitimate child is able to give are inadequate, the mother must assist him to the extent of her ability.

§ 197. The father of a legitimate unmarried minor child is entitled to its custody, services, and earnings; but he cannot transfer such custody or services to any other person, except the mother, without her written consent, unless she has deserted him, or is living separate from him by agreement.

If the father be dead, or be unable, or refuse to take the custody, or has abandoned his family, the mother is entitled thereto. [In effect July 1, 1874.]

§ 198. The husband and father, as such, has no rights superior to those of the wife and mother, in regard to the care, custody, education, and control of the children of the marriage, while such husband and wife live separate and apart from each other.

§ 199. Without application for a divorce, the husband or the wife may bring an action for the exclusive control of the children of the marriage; and the court may, during the pendency of such action, or at the final hearing thereof, or afterwards, make such order or decree in regard to the support, care, custody, education, and control of the children of the marriage, as may be just, and in accordance with the natural rights of the parents and the best interests of the children, and may at any time thereafter amend, vary, or modify such order or decree, as the natural rights and the interests of the parties, including the children, may require.

§ 200. The mother of an illegitimate unmarried minor is entitled to its custody, services, and earnings.

§ 201. The proper court may direct an allowance to be made to the parent of a child, out of its property, for its past or future support and education, on such conditions as may be proper, whenever such direction is for its benefit.

§ 202. The parent, as such, has no control over the property of the child.

§ 203. The abuse of parental authority is the subject of judicial cognizance in a civil action brought by the child, or by its relative within the third degree, or by the supervisors of the county where the child resides; and when the abuse is established, the child may be freed from the dominion of the parent, and the duty of support and education enforced.

Omission to supply a child with necessaries is a misdemeanor, and desertion is punished by imprisonment. Penal Code, §§ 270, 271.

§ 204. The authority of a parent ceases:

1. Upon the appointment, by a court, of a guardian of the person of a child;

2. Upon the marriage of the child ; or
3. Upon its attaining majority.

§ 205. If a parent chargeable with the support of a child dies, leaving it chargeable to the county, and leaving an estate sufficient for its support, the supervisors of the county may claim provision for its support from the parent's estate by civil action, and for this purpose may have the same remedies as any creditors against that estate, and against the heirs, devisees, and next of kin of the parent.

§ 206. It is the duty of the father, the mother, and the children of any poor person who is unable to maintain himself by work, to maintain such person to the extent of their ability. The promise of an adult child to pay for necessities previously furnished to such parent is binding.

§ 207. If a parent neglects to provide articles necessary for his child who is under his charge, according to his circumstances, a third person may in good faith supply such necessities, and recover the reasonable value thereof from the parent.

§ 208. A parent is not bound to compensate the other parent, or a relative, for the voluntary support of his child, without an agreement for compensation, nor to compensate a stranger for the support of a child who has abandoned the parent without just cause.

§ 209. A husband is not bound to maintain his wife's children by a former husband ; but if he receives them into his family and supports them, it is presumed that he does so as a parent ; and, where such is the case, they are not liable to him for their support, nor he to them for their services.

§ 210. Where a child, after attaining majority, continues to serve and to be supported by the parent, neither party is entitled to compensation, in the absence of an agreement therefor.

§ 211. The parent, whether solvent or insolvent, may relinquish to the child the right of controlling him and receiving his earnings. Abandonment by the parent is presumptive evidence of such relinquishment.

§ 212. The wages of a minor employed in service may be paid to him until the parent or guardian entitled thereto gives the employer notice that he claims such wages. [In effect July 1, 1874.]

§ 213. A parent entitled to the custody of a child has a right to change his residence, subject to the power of the proper court to restrain a removal which would prejudice the rights or welfare of the child.

§ 214. When a husband and wife live in a state of separation, without being divorced, any court of competent jurisdiction, upon application of either, if an inhabitant of this State, may inquire into the custody of any unmarried minor child of the marriage, and may award the custody of such child to either, for such time and under such regulations as the case may require. The decision of the court must be guided by the rules prescribed in section 246.

See Act of March 7, 1874, Relative to Orphans and Abandoned Children Appendix, pp.

§ 215. A child born before wedlock becomes legitimate by the subsequent marriage of its parents. [In effect July 1, 1874.]

Child stealing is punished by § 278 of the Penal Code, and abortion, or submitting to attempted abortion, by imprisonment of from one to five years, §§ 274, 275.

CHAPTER II.

ADOPTION.

SECTION 221. Child may be adopted.

222. Who may adopt.

223. Consent of wife necessary.

224. Consent of child's parents.

225. Consent of child.

226. Proceedings on adoption.

227. Judge's order.

228. Effect of adoption.

229. Effect on former relations of child.

230. Adoption of illegitimate child.

§ 221. Any minor child may be adopted by any adult person, in the cases and subject to the rules prescribed in this chapter.

§ 222. The person adopting a child must be at least ten years older than the person adopted. [In effect July 1, 1874.]

§ 223. A married man, not lawfully separated from his wife, cannot adopt a child without the consent of his wife; nor can a married woman, not thus separated from her husband, without his consent, provided the husband or wife, not consenting, is capable of giving such consent. [In effect July 1, 1874.]

§ 224. A legitimate child cannot be adopted without the consent of its parents, if living, nor an illegitimate child without the consent of its mother, if living, except that consent is not necessary from a father or mother deprived of civil rights, or adjudged guilty of adultery, or of cruelty, and for either cause divorced, or adjudged to be a habitual drunkard, or who has been judicially deprived of the custody of the child on account of cruelty or neglect.

§ 225. The consent of a child, if over the age of twelve years, is necessary to its adoption.

§ 226. The person adopting a child, and the child adopted, and the other persons, if within or residents of this State, whose consent is necessary, must appear before the judge of the Superior Court of the county where the person adopting resides, and the necessary consent must thereupon be signed and an agreement be executed by the person adopting, to the effect that the child shall be adopted and treated in all respects as his own lawful child should be treated. If the persons whose consent is necessary are not within or are not residents of this State, then their written consent, duly proved or acknowledged, according to sections eleven hundred and eighty-two and eleven hundred and eighty-three of this Code, shall be filed in said Superior Court at the time of the application for adoption. [In effect April 5, 1880.]

§ 227. The judge must examine all persons appearing before him pursuant to the last section, each separately, and satisfied that the interests of the child will be promoted by adoption, he must make an order declaring that the child all thenceforth be regarded and treated in all respects as a child of the person adopting.

§ 228. A child, when adopted, may take the family name of the person adopting. After adoption, the two shall sustain towards each other the legal relation of parent and child, and have all the rights and be subject to all the duties of that relation. [In effect July 1, 1874.]

§ 229. The parents of an adopted child are, from the time of the adoption, relieved of all parental duties towards, and all responsibility for, the child so adopted, and have no right over it.

§ 230. The father of an illegitimate child, by publicly acknowledging it as his own, receiving it as such, with the consent of his wife, if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such; and such child is thereupon deemed for all purposes legitimate from the time of its birth. The foregoing provisions of this chapter do not apply to such an adoption.

52 Cal. 83.

TITLE III.

GUARDIAN AND WARD.

- SECTION** 236. Guardian, what.
 237. Ward, what.
 238. Kinds of guardians.
 239. General guardian, what.
 240. Special guardian, what.
 241. Appointment by parent.
 242. No person guardian of estate without appointment.
 243. Appointment by court.
 244. Same.
 245. Jurisdiction.
 246. Rules for awarding custody of minor.
 247. Powers of guardian appointed by court.
 248. Duties of guardian of the person.
 249. Duties of guardian of estate.
 250. Relation confidential.
 251. Guardian under direction of court.
 252. Death of a joint guardian.
 253. Removal of guardian.
 254. Guardian appointed by parent, how superseded.

SECTION 255. Guardian appointed by court, how superseded

256. Released by ward.

257. Guardian's discharge.

258. Insane persons.

§ 236. A guardian is a person appointed to take care of the person or property of another.

§ 237. The person over whom or over whose property a guardian is appointed, is called his ward.

§ 238. Guardians are either :

1. General ; or,
2. Special.

§ 239. A general guardian is a guardian of the person or of all the property of the ward within this State, or of both.

§ 240. Every other is a special guardian.

§ 241. A guardian of the person or estate, or of both, of a child born, or likely to be born, may be appointed by will or by deed, to take effect upon the death of the parent appointing :

1. If the child be legitimate, by the father, with the written consent of the mother ; or by either parent, if the other be dead or incapable of consent ;

2. If the child be illegitimate, by the mother. [In effect July 1, 1874.]

§ 242. No person, whether a parent or otherwise, has any power as guardian of property, except by appointment as hereinafter provided.

§ 243. A guardian of the person or property, or both, of a person residing in this State, who is a minor, or of unsound mind, may be appointed in all cases, other than those named in section two hundred and forty-one, by the Superior Court, as provided in the Code of Civil Procedure. [In effect April 5, 1880.]

§ 244. A guardian of the property within this State of a person not residing therein, who is a minor, or of unsound mind, may be appointed by the Superior Court. [In effect April 5, 1880.]

§ 245. In all cases the court making the appointment of a guardian has exclusive jurisdiction to control him.

§ 246. In awarding the custody of a minor, or in appointing a general guardian, the court or officer is to be guided by the following considerations :

1. By what appears to be for the best interest of the child in respect to its temporal and its mental and moral welfare ; and if the child be of a sufficient age to form an intelligent preference, the court may consider that preference in determining the question.

2. As between parents adversely claiming the custody or guardianship, neither parent is entitled to it as of right ; but, other things being equal, if the child be of tender years, it should be given to the mother ; if it be of an age to require education and preparation for labor or business, then to the father.

3. Of two persons equally entitled to the custody in other respects, preference is to be given as follows :

1. To a parent ;

2. To one who was indicated by the wishes of a deceased parent ;

3. To one who already stands in the position of a trustee of a fund to be applied to the child's support ;

4. To a relative. [In effect July 1, 1874.]

See § 214.

§ 247. A guardian appointed by a court has power over the person and property of the ward, unless otherwise ordered.

§ 248. A guardian of the person is charged with the custody of the ward, and must look to his support, health, and education. He may fix the residence of the ward at any place within the State, but not elsewhere, without permission of the court.

§ 249. A guardian of the property must keep safely the property of his ward. He must not permit any unnecessary waste or destruction of the real property, nor make any sale of such property without the order of the Superior Court, but must, so far as it is in his power, maintain the same, with its buildings and appurtenances, out of the income or other property of the estate, and deliver it to the ward, at the close of

his guardianship, in as good condition as he received it. [In effect April 5, 1880.]

§ 250. The relation of guardian and ward is confidential, and is subject to the provisions of the Title on Trust.

§ 251. In the management and disposition of the person or property committed to him, a guardian may be regulated and controlled by the court.

§ 252. On the death of one of two or more joint guardians, the power continues to the survivor until a further appointment is made by the court.

§ 253. A guardian may be removed by the Superior Court for any of the following causes :

1. For abuse of his trust ;
 2. For continued failure to perform its duties ;
 3. For incapacity to perform its duties ;
 4. For gross immorality ;
 5. For having an interest adverse to the faithful performance of his duties ;
 6. For removal from the State ;
 7. In the case of a guardian of the property, for insolvency ;
- or,
8. When it is no longer proper that the ward should be under guardianship. [In effect April 5, 1880.]

§ 254. The power of a guardian appointed by a parent is superseded :

1. By his removal, as provided by section 253 ;
2. By the solemnized marriage of the ward ; or,
3. By the ward's attaining majority.

§ 255. The power of a guardian appointed by a court is suspended only :

1. By order of the court ; or,
2. If the appointment was made solely because of the ward's minority, by his attaining majority ; or,
3. The guardianship over the person of the ward, by the marriage of the ward. [In effect July 1, 1874.]

§ 256. After a ward has come to his majority, he may settle accounts with his guardian, and give him a release, which is valid if obtained fairly and without undue influence.

§ 257. A guardian appointed by a court is not entitled to his discharge until one year after the ward's majority.

§ 258. A person of unsound mind may be placed in an asylum for such persons, upon the order of the Superior Court of the county in which he resides, as follows :

1. The court must be satisfied, upon examination in open court and in the presence of such person, from the testimony of two reputable physicians, that such person is of unsound mind, and unfit to be at large ;

2. After the order is granted, the person alleged to be of unsound mind, his or her husband or wife, or relative to the third degree, or any citizen, may demand an investigation before a jury, which must be conducted in all respects as under an inquisition of lunacy.

As to appointment, rights, and powers of guardian see Code Civ Proc. §§ 1747-1809.

TITLE IV.

MASTER AND SERVANT.

SECTION 264. Minors may apprentice themselves.

265. Consent of parents, &c., requisite.

266. Written consent.

267. Executors may bind.

268. Supervisors may bind out.

269. Town officers.

270. Age of apprentice to be inserted in indentures.

271. Indentures, conditions in.

272. Same.

273. Deposit of indentures.

274. Alien minors.

275. Contract under preceding section to be acknowledged.

276. Causes for annulling indentures.

§ 264. Every minor, with the consent of the persons or officers hereinafter mentioned, may, of his own free will, bind himself, in writing, to serve as clerk, apprentice, or servant, in any profession, trade, or employment, during his minority ; and such binding shall be as valid and effectual as if such minor was of full age at the time of making the engagement.

Adding apprentice to run away a misdemeanor. Penal Code, § 646.

See Act of April 3 1876, Relative to Apprentices, Appendix, pp.

§ 265. Such consent shall be given :

1. By the father of the minor. If he be dead, or be not of legal capacity to give his consent, or if he shall have abandoned or neglected to provide for his family, and such fact be certified by a justice of the peace of the township or county, or sworn to by a credible witness, and such certificate or affidavit be indorsed on the indenture, then :

2. By the mother. If the mother be dead, or be not of legal capacity to give such consent or refusal, then :

3. By the guardian of such infant. If such infant have no parent living, or none in a legal capacity to give consent, and there be no guardian, then :

4. By the supervisors of the county, or any two justices of the peace, or the judge of the Superior Court of the county ;

5. If such minor be an orphan, under the care and control of any orphan asylum in this State, then by the board of managers thereof. [In effect April 5, 1880.]

§ 266. Such consent shall be signified in writing by the person entitled to give the same, by certificate at the end of, or indorsed upon the indentures.

§ 267. The executors of any last will of a parent who shall be directed in such will to bring up his or her child to some trade or calling, may bind such child to service as a clerk, or apprentice, in like manner as the father might have done if living. If there is a surviving mother, her consent also is necessary.

§ 268. The supervisors of the county may bind out minors who are or shall become chargeable to such county, to be clerks, apprentices, or servants, which binding shall be as effectual as if such minors had bound themselves with the consent of their father.

§ 269. In every town or city the presiding officer of the first council or legislative board thereof, if there be more than one, or any public officer or officers appointed to provide for the poor, may in like manner bind out any child who, or whose parents are, chargeable to any such town or city.

§ 270. The age of every infant so bound shall be inserted in the indentures, and shall be taken to be the true age; and whenever public officers are authorized to execute any indentures, or their consent is required to the validity of the same.

CHAPTER I.

FORMATION OF CORPORATIONS.

ARTICLE I. CORPORATIONS DEFINED AND HOW ORGANIZED, §§ 283-300.
II. BY-LAWS, DIRECTORS, ELECTIONS, AND MEETINGS, §§ 301-320.

ARTICLE I.

CORPORATIONS DEFINED AND HOW ORGANIZED.

SECTION 283. Corporation defined.

284. What are public and private corporations.

285. Corporations, how formed.

286. For what purpose private corporations are formed.

287. How corporations may continue their existence under this Code.

288. Existing corporations not affected.

289. Name of instrument creating corporation.

290. Articles of incorporation, what to contain.

291. Certain corporations to state further facts in articles.

292. Five corporators, three to be citizens of the State, to sign articles and acknowledge the same.

293. Prerequisite to filing articles. Amounts to be subscribed to be fixed.

294. Prerequisite to filing articles of corporations for profit.

295. Oath of officer to subscription of stock and payment of ten per cent.

296. To file articles with county clerk and secretary of state, and receive certificate. Term of existence.

297. Certified copy of certificate to be *prima facie* evidence.

298. Who are members and who stockholders of a corporation.

299. When member dies successor to be elected.

300. Banking corporations may elect to have capital stock.

§ 283. A CORPORATION is a creature of the law, having certain powers and duties of a natural person. Being created by the law, it may continue for any length of time which the law prescribes.

51 Cal. 410.

§ 284. Corporations are either public or private. Public corporations are formed or organized for the government of a portion of the State; all other corporations are private. [In effect July 1, 1874.]

51 Cal. 409.

§ 285. Private corporations may be formed by the voluntary association of any five or more persons in the manner

prescribed in this article. A majority of such persons must be residents of this State. [In effect July 1, 1874.]

§ 286. Private corporations may be formed for any purpose for which individuals may lawfully associate themselves. [In effect July 1, 1874.]

§ 287. Any corporation existing on the first day of January, one thousand eight hundred and seventy-three, formed under the laws of this State, and still existing, which has not already elected to continue its existence, under the provisions of this Code applicable thereto, may, at any time hereafter, make such election by the unanimous vote of all its directors, or such election may be made at any annual meeting of the stockholders, or members, or at any meeting called by the directors expressly for considering the subject, if voted by stockholders representing a majority of the capital stock, or by a majority of the members, or may be made by the directors upon the written consent of that number of such stockholders or members. A certificate of the action of the directors, signed by them and their secretary, when the election is made by their unanimous vote, or upon the written consent of the stockholders or members, or a certificate of the proceedings of the meeting of the stockholders or members, when such election is made at any such meeting, signed by the chairman and secretary of the meeting, and a majority of the directors, must be filed in the office of the clerk of the county where the original articles of corporation are filed, and a certified copy thereof must be filed in the office of the secretary of state; and thereafter the corporation shall continue its existence under the provisions of this Code which are applicable thereto, and shall possess all the rights and powers, and be subject to all the obligations, restrictions, and limitations prescribed thereby. [In effect July 1, 1874.]

57 Cal. 533.

§ 288. No corporation formed or existing before twelve o'clock, noon, of the day upon which this Code takes effect, is affected by the provisions of Part IV. of Division First of this Code, unless such corporation elects to continue its existence under it as provided in section 287; but the laws under which such corporations were formed and exist are applicable to all such corporations, and are repealed, subject to the provisions of this section.

52 Cal. 141.

§ 297. A copy of any articles of incorporation filed in pursuance of this chapter, and certified by the secretary of state, must be received in all the courts and other places as *prima facie* evidence of the facts therein stated. [In effect July 1, 1874.]

§ 298. The owners of shares in a corporation which has a capital stock are called stockholders. If a corporation has no capital stock, the corporators and their successors are called members.

§ 299. No corporation hereafter formed shall purchase, locate, or hold property in any county in this State, without filing a copy of the copy of its articles of incorporation filed in the office of the secretary of state, duly certified by such secretary of state, in the office of the county clerk of the county in which such property is situated, within sixty days after such purchase or location is made. Every corporation now in existence, whether formed under the provisions of this Code or not, must, within ninety days after the passage of this section, file such certified copy of the copy of its articles of incorporation in the office of the county clerk of every county in this State in which it holds any property, except the county where the original articles of incorporation are filed; and if any corporation hereafter acquire any property in a county other than that in which it now holds property, it must, within ninety days thereafter, file with the clerk of such county such certified copy of the copy of its articles of incorporation. The copies so filed with the several county clerks and certified copies thereof shall have the same force and effect in evidence as would the originals. Any corporation failing to comply with the provisions of this section shall not maintain or defend any action or proceeding in relation to such property, its rents, issues, or profits, until such articles of incorporation, and such certified copy of its articles of incorporation, and such certified copy of the copy of its articles of incorporation shall be filed at the places directed by the general law and this section; *provided*, that all corporations shall be liable in damages for any and all loss that may arise by the failure of such corporation to perform any of the foregoing duties within the time mentioned in this section; *and provided further*, that the said damages may be recovered in an action brought in any court of this State of competent jurisdiction, by any party or parties suffering the same. [In effect, April 23, 1880.]

§ 300. Every corporation that has been or may be created under the general laws of this State, doing a banking business therein, and which has no capital stock, may elect to have a capital stock, and may issue certificates of stock therefor in the same manner as corporations formed under the provisions of Chapter I., Article I., of the Civil Code, relating to the formation of corporations: *provided*, that no such corporation shall use or convert any moneys or funds theretofore belonging to it or under its control into capital stock, but such funds or moneys must be held and managed only for the purposes and in the manner for which they were created. Before such change is made, a majority of the members of such corporation present at a meeting called for the purpose of considering the proposition whether it is best to have a capital stock, its amount, and the number of shares into which it shall be divided, must vote in favor of having a capital stock, fix the amount thereof, and the number of shares into which it shall be divided. Notice of the time and place of holding such meeting and its object must be given by the president of such corporation by publication in some newspaper printed and published in the county, or city and county, in which the principal place of business of the corporation is situated, at least once a week for three successive weeks prior to the holding of the meeting. A copy of the proceedings of this meeting, giving the number of persons present, the votes taken, the notice calling the meeting, the proof of its publication, the amount of capital actually subscribed, and by whom, all duly certified by the president and secretary of the corporation, must be filed in the offices of the secretary of state and clerk of the county where the articles of incorporation are filed. Thereafter such corporation is possessed of all the rights and powers, and is subject to all the obligations, restrictions, and limitations, as if it had been originally created with a capital stock. *And provided, further*, that no bank in this State shall ever pay any dividend, upon so-called guaranty notes, nor upon any stock except upon the amount actually paid in money into said capital upon such stock, and any payment made in violation of this provision shall render all officers and directors consenting to be same jointly and severally liable to the depositors to the extent thereof. [In effect May 28, 1878.]

ARTICLE II.

BY-LAWS, DIRECTORS, ELECTIONS, AND MEETINGS.

- Section 301.** Adoption of by-laws, when, how, and by whom.
- 302. Directors, election of, &c.
 - 303. By-laws may provide for what.
 - 304. By-laws recorded and how amended.
 - 305. How many and who to be directors.
 - 306. Directors must be elected and by-laws adopted at first meeting.
 - 307. Elections, how conducted.
 - 308. Organization of board of directors, &c.
 - 309. Dividends to be made from surplus profits.
 - 310. Removal from office of directors, &c.
 - 311. Justice of the peace may order meeting when.
 - 312. Majority of stock must be represented.
 - 313. All stock may be represented in votes.
 - 314. Election may be postponed.
 - 315. Complaints and quo warranto regarding elections.
 - 316. False certificate, report, or notice to make officers liable
 - 317. Meeting by consent to be valid.
 - 318. Proceedings at meeting to be binding.
 - 319. Meetings, where held.
 - 320. Special meetings, how called.

§ 301. Every corporation formed under this title must, within one month after filing articles of incorporation, adopt a Code of by-laws for its government not inconsistent with the Constitution and laws of this State. The assent of stockholders representing a majority of all the subscribed capital stock, or of a majority of the members, if there be no capital stock, is necessary to adopt by-laws, if they are adopted at a meeting called for that purpose; and in the event of such meeting being called, two weeks' notice of the same by advertisement

in some newspaper published in the county in which the principal place of business of the corporation is located, or if none is published therein, then in a paper published in an adjoining county, must be given by order of the acting president. The written assent of the holders of two thirds of the stock, or of two thirds of the members, if there be no capital stock, shall be effectual to adopt a code of by-laws without a meeting for that purpose. [In effect July 1, 1874.]

§ 302. The directors of a corporation must be elected annually by the stockholders or members, and if no provision is made in the by-laws for the time of election, the election must be held on the first Tuesday in June. Notice of such election must be given, and the right to vote determined as prescribed in section 301.

§ 303. A corporation may, by its by-laws, where no other provision is specially made, provide for:

1. The time, place, and manner of calling and conducting its meetings;
2. The number of stockholders or members constituting a quorum;
3. The mode of voting by proxy;
4. The time of the annual election for directors, and the mode and manner of giving notice thereof;
5. The compensation and duties of officers;
6. The manner of election and the tenure of office of all officers other than the directors; and
7. Suitable penalties for violations of by-laws, not exceeding, in any case, one hundred dollars for any one offence. [In effect July 1, 1874.]

§ 304. All by-laws adopted must be certified by a majority of the directors and secretary of the corporation, and copied in a legible hand in some book kept in the office of the corporation, to be known as the "Book of By-laws," and no by-law shall take effect until so copied, and the book shall then be open to the inspection of the public during office hours of each day except holidays. The by-laws may be repealed or amended, or new by-laws may be adopted, at the annual meeting, or at any other meeting of the stockholders or members called for that purpose by the directors, by a vote representing two thirds of the subscribed stock, or by two thirds of the members, or the power to repeal and amend the by-laws, and adopt new by-laws, may, by a similar vote at any such meet-

ing, be delegated to the board of directors. The power when delegated may be revoked by a similar vote at any regular meeting of the stockholders or members. Whenever any amendment or new by-law is adopted, it shall be copied in the book of by-laws with the original by-laws, and immediately after them, and shall not take effect until so copied. If any by-law be repealed, the fact of repeal, with the date of the meeting at which the repeal was enacted, shall be stated in the said book, and until so stated, the repeal shall not take effect. [In effect July 1, 1874.]

§ 305. The corporate powers, business, and property of all corporations formed under this title must be exercised, conducted, and controlled by a board of not less than five nor more than eleven directors, to be elected from among the holders of stock, or, where there is no capital stock, then from the members of such corporations; except that corporations formed, or to be formed, for the purpose of erecting and managing halls and buildings for the meetings and accommodation of several lodges, or societies, of any benevolent or charitable order, or organization, and in connection therewith, the leasing of stores and offices in such building or buildings, for other purposes, the corporate powers, business, and property thereof may be conducted, exercised, and controlled by a board of not less than five nor more than fifty directors, to be chosen from among the stockholders of such corporation, or from among the members of such order or organization. A majority of the directors must be, in all cases, citizens of this State. Directors of corporations for profit must be holders of stock therein, in an amount to be fixed by the by-laws of the corporation. Directors of all other corporations must be members thereof. Unless a quorum is present and acting, no business performed, or act done, is valid, as against the corporation. Whenever a vacancy occurs in the office of director, unless the by-laws of the corporation otherwise provide, such vacancy must be filled by an appointee of the board. [In effect January 20, '876.]

§ 306. At the first meeting at which the by-laws are adopted, or at such subsequent meeting as may be then designated, directors must be elected, to hold their offices for one year, and until their successors are elected and qualified. [In effect July 1, 1874.]

§ 307. All elections must be by ballot, and every stockholder shall have the right to vote in person or by proxy the

number of shares standing in his name, as provided in section three hundred and twelve of this Code, for as many persons as there are directors to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit. In corporations having no capital stock, each member of the corporation may cast as many votes for one director as there are directors to be elected, or may distribute the same among any or all of the candidates. In either case, the directors receiving the highest number of votes shall be declared elected. [In effect April 2, 1878.]

§ 308. Immediately after their election, the directors must organize by the election of a president, who must be one of their number, a secretary, and treasurer. They must perform the duties enjoined on them by law and the by-laws of the corporation. A majority of the directors is a sufficient number to form a board for the transaction of business, and every decision of a majority of the directors forming such board, made when duly assembled, is valid as a corporate act.

§ 309. The directors of corporations must not make dividends, except for the surplus profits arising from the business thereof; nor must they divide, withdraw, or pay to the stockholders, or any of them, any part of the capital stock; nor must they create debts beyond their subscribed capital stock, or reduce or increase the capital stock, except as hereinafter specially provided. For a violation of the provisions of this section, the directors under whose administration the same may have happened (except those who may have caused their dissent therefrom to be entered at large on the minutes of the directors at the time, or were not present when the same did happen) are, in their individual and private capacity, jointly and severally liable to the corporation, and to the creditors thereof, in the event of its dissolution, to the full amount of the capital stock so divided, withdrawn, paid out, or reduced, or debt contracted; and no statute of limitations is a bar to any suit against such directors for any sums for which they are made liable by this section. There may, however, be a division and distribution of the capital stock of any corporation which remains after the payment of all its debts, upon its dissolution or the expiration of its term of existence.

Misconduct as to dividends and discounts, Penal Code, § 560; Fraud in accounts, § 563; False reports, § 564; By absent director, §§ 569, 570

57 Cal. 594; 58 Cal. 551.

§ 310. No director shall be removed from office, unless by a vote of two thirds of the members, or of stockholders holding two thirds of the capital stock, at a general meeting held after previous notice of the time and place, and of the intention to propose such removal. Meetings of stockholders for this purpose may be called by the president, or by a majority of the directors, or by members or stockholders holding at least one half of the votes. Such calls must be in writing, and addressed to the secretary, who must thereupon give notice of the time, place, and object of the meeting, and by whose order it is called. If the secretary refuse to give the notice, or if there is none, the call may be addressed directly to the members or stockholders, and be served as a notice, in which case it must specify the time and place of meeting. The notice must be given in the manner provided in section 301 of this title, unless other express provision has been made therefor in the by-laws. In case of removal, the vacancy may be filled by election at the same meeting.

§ 311. Whenever, from any cause, there is no person authorized to call or to preside at a meeting of a corporation, any justice of the peace of the county where such corporation is established may, on written application of three or more of the stockholders or of the members thereof, issue a warrant to one of the stockholders or members, directing him to call a meeting of the corporation, by giving the notice required, and the justice may in the same warrant direct such person to preside at such meeting until a clerk is chosen and qualified, if there is no other officer present legally authorized to preside thereat.

§ 312. At all elections or votes had for any purpose there must be a majority of the subscribed capital stock, or of the members, represented, either in person or by proxy in writing. Every person acting therein, in person or by proxy or representative, must be a member thereof or a *bonâ fide* stockholder, having stock in his own name on the stock books of the corporation at least ten days prior to the election. Any vote or election had other than in accordance with the provisions of this article is voidable at the instance of absent or any stockholders or members, and may be set aside by petition to the District Court of the county where the same was held. Any regular or called meeting of the stockholders or members may adjourn from day to day, or from time to time, if for any reason there is not present a majority of the subscribed stock

or members, or no election had—such adjournment and the reasons therefor being recorded in the journal of proceedings of the board of directors. [In effect April 1, 1878.]

§ 313. The shares of stock of an estate of a minor, or insane person, may be represented by his guardian, and of a deceased person by his executor or administrator. [In effect July 1, 1874.]

§ 314. If from any cause an election does not take place on the day appointed in the by-laws, it may be held on any day thereafter as is provided for in such by-laws, or to which such election may be adjourned or ordered by the directors. If an election has not been held at the appointed time, and no adjourned or other meeting for the purpose has been ordered by the directors, a meeting may be called by the stockholders as provided in section 310 of this article.

§ 315. Upon the application of any person or body corporate aggrieved by any election held by any corporate body, the District Court of the district in which such election is held must proceed forthwith to hear the allegations and proofs of the parties, or otherwise inquire into the matters of complaint, and thereupon confirm the election, order a new one, or direct such other relief in the premises as accords with right and justice. *Upon filing the petition, and before any further proceedings are had under this section, five days' notice of the hearing must be given, under the direction of the court or the judge thereof, to the adverse party or those to be affected thereby.* [In effect April 1, 1878.]

§ 316. Any officer of a corporation who wilfully gives a certificate, or wilfully makes an official report, public notice, or entry in any of the records or books of the corporation, concerning the corporation or its business, which is false in any material representation, shall be liable for all the damages resulting therefrom to any person injured thereby; and if two or more officers unite or participate in the commission of any of the acts herein designated, they shall be jointly and severally liable. [In effect July 1, 1874.]

Penal Code, §§ 553, 564

§ 317. When all the stockholders or members of a corporation are present at any meeting, however called or notified, and sign a written consent thereto on the record of such meet-

ing, the doings of such meeting are as valid as if had at a meeting legally called and noticed.

§ 318. The stockholders or members of such corporation, when so assembled, may elect officers to fill all vacancies then existing, and may act upon such other business as might lawfully be transacted at regular meetings of the corporation.

§ 319. The meetings of the stockholders and board of directors of a corporation must be held at its office or principal place of business.

§ 320. When no provision is made in the by-laws for regular meetings of the directors and the mode of calling special meetings, all meetings must be called by special notice in writing, to be given to each director by the secretary, on the order of the president, or if there be none, on the order of two directors.

§ 321. Every corporation doing a banking business in this State must keep in its office, in a place accessible to the stockholders, depositors, and creditors thereof, and for their use, a book, containing a list of all stockholders in such corporation, and the number of shares of stock held by each; and every such corporation must keep posted in its office, in a conspicuous place, accessible to the public generally, a notice, signed by the president or secretary, showing: *First*, The names of the directors of such corporation. *Second*, The number and value of shares of stock held by each director. The entries on such book, and such notice, shall be made and posted within twenty-four hours after any transfer of stock, and shall be conclusive evidence against each director and stockholder of the number of shares of stock held by each. The provisions of this section shall apply to all banking corporations, formed or existing before twelve o'clock, noon, of the day on which this Code took effect, as well as to those formed after such time. [Approved January 29, 1876.]

§ 321a. Every corporation that has been or may be created under the general laws of this State may change its principal place of business from one place to another in the same county, or from one city or county to another city or county within this State. Before such change is made, the consent, in writing, of the holders of two thirds of the capital stock must be obtained and filed in the office of the corporation

When such consent is obtained and filed, notice of the intended removal or change must be published, at least once a week, for three successive weeks, in some newspaper published in the county wherein said principal place of business is situated, if there is one published therein; if not, in a newspaper of an adjoining county, giving the name of the county or city where it is situated, and that to which it is intended to remove it. [In effect April 3, 1876.]

CHAPTER II.

CORPORATE STOCK.

ARTICLE I.

STOCK AND STOCKHOLDERS.

- SECTION 322.** Liabilities of stockholders. They may be released, when
323. Certificates, how and when issued.
324. Transfer of shares.
325. Transfer of shares held by married women, &c Dividends payable to married women.
326. Non-resident stockholders. Bonds.
327. Contract to relieve directors void.

§ 322. Each stockholder of a corporation is individually and personally liable for such portions of its debts and liabilities as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation, and for a like proportion only of each debt or claim against the corporation. Any creditor of the corporation may institute joint or several actions against any of its stockholders, for the proportion of his claim payable by each, and in such action the court must ascertain the proportion of the claim or debt for which each defendant is liable, and a several judgment must be rendered against each, in conformity therewith. If any stockholder pays his proportion of any debt due from the corporation, incurred while he was such stockholder, he is relieved from any further personal liability for such debt, and if an action has been brought against him upon such debt, it shall be dismissed, as to him, upon his paying the costs, or such proportion thereof as may be properly chargeable against him. The liability of each stockholder is determined by the amount of stock or shares owned by him at the time the debt or liability was incurred; and such liability is not released by any subsequent transfer of stock. The term stockholder, as

used in this section, shall apply not only to such persons as appear by the books of the corporation to be such, but also to every equitable owner of stock, although the same appear on the books in the name of another; and also to every person who has advanced the instalments or purchase-money of stock in the name of a minor, so long as the latter remains a minor; and also to every guardian, or other trustee, who voluntarily invests any trust funds in the stock. Trust funds in the hands of a guardian, or trustee, shall not be liable under the provisions of this section, by reason of any such investment; nor shall the person for whose benefit the investment is made be responsible in respect to the stock until he becomes competent and able to control the same; but the responsibility of the guardian or trustee making the investment shall continue until that period. Stock held as collateral security, or by a trustee, or in any other representative capacity, does not make the holder thereof a stockholder within the meaning of this section, except in the cases above mentioned, so as to charge him with any proportion of the debts or liabilities of the corporation; but the pledgor, or person or estate represented, is to be deemed the stockholder, as respects such liability. In corporations having no capital stock, each member is individually and personally liable for his proportion of its debts and liabilities, and similar actions may be brought against him, either alone or jointly with other members, to enforce such liability, as by this section may be brought against one or more stockholders, and similar judgments may be rendered. The liability of each stockholder of a corporation formed under the laws of any other State or Territory of the United States, or of any foreign country, and doing business within this State, shall be the same as the liability of a stockholder of a corporation created under the Constitution and laws of this State. [Approved March 15, 1876.]

58 Cal. 380.

§ 323. All corporations for profit must issue certificates for stock when fully paid up, signed by the president and secretary, and may provide, in their by-laws, for issuing certificates prior to the full payment, under such restrictions and for such purposes as their by-laws may provide.

§ 324. Whenever the capital stock of any corporation is divided into shares, and certificates therefor are issued, such shares of stock are personal property, and may be transferred

by indorsement by the signature of the proprietor, or his attorney or legal representative, and delivery of the certificate; but such transfer is not valid, except between the parties thereto, until the same is so entered upon the books of the corporation as to show the names of the parties by and to whom transferred, the number or designation of the shares, and the date of the transfer.

53 Cal. 431. See act taxing transfer of shares, following § 471, p. 71 b.

58 Cal. 426, 600.

§ 325. Shares of stock in corporations held or owned by a married woman may be transferred by her, her agent, or attorney, without the signature of her husband, in the same manner as if such married woman were a *feme sole*. All dividends payable upon any shares of stock of a corporation held by a married woman may be paid to such married woman, her agent or attorney, in the same manner as if she were unmarried, and it is not necessary for her husband to join in a receipt therefor; and any proxy or power given by a married woman, touching any shares of stock of any corporation owned by her, is valid and binding without the signature of her husband, the same as if she were unmarried.

§ 326. When the shares of stock in a corporation are owned by parties residing out of the State, the president, secretary, or directors of the corporation, before entering any transfer of the shares on its books, or issuing a certificate therefor to the transferee, may require from the attorney or agent of the non-resident owner, or from the person claiming under the transfer, an affidavit or other evidence that the non-resident owner was alive at the date of the transfer, and if such affidavit or other satisfactory evidence be not furnished, may require from the attorney, agent, or claimant, a bond of indemnity, with two sureties, satisfactory to the officers of the corporation, or, if not so satisfactory, then one approved by a judge of the Superior Court of the county in which the principal office of the corporation is situated, conditioned to protect the corporation against any liability to the legal representatives of the owner of the shares, in case of his or her death before the transfer; and if such affidavit or other evidence or bond be not furnished when required, as herein provided, neither the corporation, nor any officer thereof, shall be liable for refusing to enter the transfer on the books of the corporation. [In effect February 16, 1883.]

58 Cal. 426.

§ 327. Any contract or contracts, verbal or written, here-

after made, whereby it is sought directly or indirectly to relieve any director or trustee of any corporation or joint stock association from any liability imposed by section three of article twelve of the Constitution of California, are hereby declared to be and shall be null and void. [In effect April 12, 1880.]

ARTICLE II.

ASSESSMENTS OF STOCK.

- SECTION 331.** Directors may levy assessments.
 332. Limitation. How levied.
 333. Levy of assessment. Old assessment remaining unpaid.
 334. What order shall contain.
 335. Notice of assessment. Form.
 336. Publication and service.
 337. Delinquent notice. Form
 338. Contents of notice.
 339. How published.
 340. Jurisdiction acquired, how.
 341. Sale to be by public auction.
 342. Highest bidder to be the purchaser.
 343. In default of bidders, corporation may purchase
 344. Disposition of stock purchased by corporation.
 345. Extension of time of delinquent sale.
 346. Assessments shall not be invalidated.
 347. Action for recovery of stock, and limitation thereof.
 348. Affidavits of publication. Affidavits of sale. To be filed:
 349. Waiver of sale. Action to recover assessment.

§ 331. The directors of any corporation formed or existing under the laws of this State, after one fourth of its capital stock has been subscribed, may, for the purpose of paying expenses, conducting business, or paying debts, levy and collect assessments upon the subscribed capital stock thereof, in the manner and form, and to the extent provided herein. [In effect July 1, 1874.]

§ 332. No one assessment must exceed ten per cent. of the amount of the capital stock named in the articles of incorporation, except in the cases in this section otherwise provided for, as follows :

1. If the whole capital of a corporation has not been paid up, and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock; or if a less amount is sufficient, then it may be for such a percentage as will raise that amount,

2. The directors of railroad corporations may assess the capital stock in instalments of not more than ten per cent. per month, unless in the articles of incorporation it is otherwise provided ;

3. The directors of fire or marine insurance corporations may assess such a percentage of the capital stock as they deem proper.

§ 333. No assessment must be levied while any portion of a previous one remains unpaid, unless :

1. The power of the corporation has been exercised in accordance with the provisions of this article for the purpose of collecting such previous assessment ;

2. The collection of the previous assessment has been enjoined ; or

3. The assessment falls within the provisions of either the first, second, or third subdivision of section 332.

§ 334. Every order levying an assessment must specify the amount thereof, when, to whom, and where payable ; fix a day, subsequent to the full term of publication of the assessment notice, on which the unpaid assessments shall be delinquent, not less than thirty nor more than sixty days from the time of making the order levying the assessment ; and a day for the sale of delinquent stock, not less than fifteen nor more than sixty days from the day the stock is declared delinquent.

§ 335. Upon the making of the order, the secretary shall cause to be published a notice thereof, in the following form :

(Name of corporation in full. Location of principal place of business.) Notice is hereby given, that at a meeting of the directors, held on the (date), an assessment of (amount) per share was levied upon the capital stock of the corporation, payable (when, to whom, and where). Any stock upon which this assessment shall remain unpaid on the (day fixed) will be delinquent and advertised for sale at public auction, and, unless payment is made before, will be sold on the (day appointed), to pay the delinquent assessment, together with costs of advertising and expenses of sale.

(Signature of secretary, with location of office.)

§ 336. The notice must be personally served upon each stockholder, or, in lieu of personal service, must be sent

through the mail, addressed to each stockholder at his place of residence, if known, and if not known, at the place where the principal office of the corporation is situated, and be published once a week, for four successive weeks, in some newspaper of general circulation and devoted to the publication of general news, published at the place designated in the articles of incorporation as the principal place of business, and also in some newspaper published in the county in which the works of the corporation are situated, if a paper be published therein. If the works of the corporation are not within a State or Territory of the United States, publication in a paper of the place where they are situated is not necessary. If there be no newspaper published at the place designated as the principal place of business of the corporation, then the publication must be made in some other newspaper of the county, if there be one, and if there be none, then in a newspaper published in an adjoining county. [In effect July 1, 1874.]

§ 337. If any portion of the assessment mentioned in the notice remains unpaid on the day specified therein for declaring the stock delinquent, the secretary must, unless otherwise ordered by the board of directors, cause to be published in the same papers in which the notice hereinbefore provided for shall have been published, a notice substantially in the following form :

(Name in full. Location of principal place of business.) **NOTICE.** — There is delinquent upon the following described stock, on account of assessment levied on the (date), (and assessments levied previous thereto, if any), the several amounts set opposite the names of the respective shareholders, as follows: (Names, number of certificate, number of shares, amount.) And in accordance with law (and an order of the board of directors, made on the [date], if any such order shall have been made), so many shares of each parcel of such stock as may be necessary, will be sold, at the (particular place), on the (date), at (the hour) of such day, to pay delinquent assessments thereon, together with costs of advertising and expenses of the sale.

(Name of secretary, with location of office.)

§ 338. The notice must specify every certificate of stock, the number of shares it represents, and the amount due thereon, except where certificates may not have been issued to parties entitled thereto, in which case the number of shares and amount due thereon, together with the fact that the certificates for such shares have not been issued, must be stated.

§ 339. The notice, when published in a daily paper, must be published for ten days, excluding Sundays and holidays, previous to the day of sale. When published in a weekly paper, it must be published in each issue for two weeks previous to the day of sale. The first publication of all delinquent sales must be at least fifteen days prior to the day of sale.

§ 340. By the publication of the notice, the corporation acquires jurisdiction to sell and convey a perfect title to all of the stock described in the notice of sale upon which any portion of the assessment or costs of advertising remains unpaid at the hour appointed for the sale, but must sell no more of such stock than is necessary to pay the assessments due and costs of sale.

§ 341. On the day, at the place, and at the time appointed in the notice of sale, the secretary must, unless otherwise ordered by the directors, sell or cause to be sold at public auction, to the highest bidder for cash, so many shares of each parcel of the described stock as may be necessary to pay the assessment and charges thereon, according to the terms of sale; if payment is made before the time fixed for sale, the party paying is only required to pay the actual cost of advertising, in addition to the assessment.

§ 342. The person offering at such sale to pay the assessment and costs for the smallest number of shares or fraction of a share is the highest bidder, and the stock purchased must be transferred to him on the stock books of the corporation, on payment of the assessment and costs.

§ 343. If, at the sale of stock, no bidder offers the amount of the assessments and costs and charges due, the same may be bid in and purchased by the corporation, through the secretary, president, or any director thereof, at the amount of the assessments, costs, and charges due; and the amount of assessments, costs, and charges must be credited as paid in on the books of the corporation, and entry of the transfer of the stock to the corporation must be made on the books thereof. While the stock remains the property of the corporation it is not assessable, nor must any dividends be declared thereon; but all assessments and dividends must be appropiated upon the stock held by the stockholders of the corporation.

§ 344. All purchases of its own stock made by any corporation vest the legal title to the same in the corporation; and the stock so purchased is held subject to the control of the stockholders, who may make such disposition of the same as they deem fit, in accordance with the by-laws of the corporation or vote of a majority of all the remaining shares. Whenever any portion of the capital stock of a corporation is held by the corporation by purchase, a majority of the remaining shares is a majority of the stock for all purposes of election or voting on any question at a stockholders' meeting.

57 Cal. 398.

§ 345. The dates fixed in any notice of assessment or notice of delinquent sale, published according to the provisions hereof, may be extended from time to time for not more than thirty days, by order of the directors, entered on the records of the corporation; but no order extending the time for the performance of any act specified in any notice is effectual unless notice of such extension or postponement is appended to and published with the notice to which the order relates.

§ 346. No assessment is invalidated by a failure to make publication of the notices hereinbefore provided for, nor by the non-performance of any act required in order to enforce the payment of the same; but in case of any substantial error or omission in the course of proceedings for collection, all previous proceedings, except the levying of the assessment, are void, and publication must be begun anew.

§ 347. No action must be sustained to recover stock sold for delinquent assessments, upon the ground of irregularity in the assessment, irregularity or defect of the notice of sale, or defect or irregularity in the sale, unless the party seeking to maintain such action first pays or tenders to the corporation, or the party holding the stock sold, the sum for which the same was sold, together with all subsequent assessments which may have been paid thereon and interest on such sums from the time they were paid; and no such action must be sustained unless the same is commenced by the filing of a complaint and the issuing of a summons thereon within six months after such sale was made.

§ 348. The publication of notice required by this article may be proved by the affidavit of the printer, foreman, or principal clerk of the newspaper in which the same was pub

lished; and the affidavit of the secretary or auctioneer is *prima facie* evidence of the time and place of sale, of the quantity and particular description of the stock sold, and to whom, and for what price, and of the fact of the purchase money being paid. The affidavits must be filed in the office of the corporation, and copies of the same, certified by the secretary thereof, are *prima facie* evidence of the facts therein stated. Certificates, signed by the secretary, and under the seal of the corporation, are *prima facie* evidence of the contents thereof. [In effect July 1, 1874.]

§ 349. On the day specified for declaring the stock delinquent, or at any time subsequent thereto and before the sale of the delinquent stock, the board of directors may elect to waive further proceedings under this chapter for the collection of delinquent assessments, or any part or portion thereof, and may elect to proceed by action to recover the amount of the assessment and the costs and expenses already incurred, or any part or portion thereof.

CHAPTER III.

CORPORATE POWERS.

ARTICLE I. GENERAL POWERS, §§ 354-361.

II. RECORDS, §§ 377, 378.

III. EXAMINATION OF CORPORATION, §§ 382-384.

IV. JUDGMENT AGAINST AND SALE OF CORPORATE PROPERTY, §§ 388-393.

ARTICLE I.

GENERAL POWERS.

SECTION 354. Powers of corporations.

355. Limitation of powers.

356. Banking expressly prohibited.

357. Misnomer does not invalidate instrument.

358. Corporation to organize within one year.

359. Increasing and diminishing capital stock, how.

360. Corporations may acquire real property, and how much.

361. Consolidation of mining corporations.

§ 354. Every corporation, as such, has power :

1. Of succession, by its corporate name, for the period limited; and when no period is limited, perpetually ;

2. To sue and be sued, in any court ;
3. To make and use a common seal, and alter the same at pleasure ;
4. To purchase, hold, and convey such real and personal estate as the purposes of the corporation may require, not exceeding the amount limited in this part ;
5. To appoint such subordinate officers or agents as the business of the corporation may require, and to allow them suitable compensation ;
6. To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock ;
7. To admit stockholders or members, and to sell their stock or shares for the payment of assessments or instalments ;
8. To enter into any obligations or contracts essential to the transaction of its ordinary affairs, or for the purposes of the corporation.

52 Cal. 59 ; 56 Cal. 68.

§ 355. In addition to the powers enumerated in the preceding section, and to those expressly given in that title of this part under which it is incorporated, no corporation shall possess or exercise any corporate powers, except such as are necessary to the exercise of the powers so enumerated and given.

§ 356. No corporation shall create or issue bills, notes, or other evidences of debt, upon loans or otherwise, for circulation as money.

Issuing or circulating paper money, except as authorized by the United States, punished by Penal Code, § 648.

§ 357. The misnomer of a corporation in any written instrument does not invalidate the instrument, if it can be reasonably ascertained from it what corporation is intended.

§ 358. If a corporation does not organize and commence the transaction of its business or the construction of its works within one year from the date of its incorporation, its corporate powers cease. The due incorporation of any company, claiming in good faith to be a corporation under this part, and doing business as such, or its right to exercise corporate powers, shall not be inquired into, collaterally, in any private suit to which such *de facto* corporation may be a party ; but such inquiry may be had at the suit of the State on information of the attorney general.

§ 359. Every corporation may increase or diminish its capital stock at a meeting of the stockholders called for that purpose by the directors, as follows:—

1. Notice of the time and place of the meeting, stating its object, and the amount to which it is proposed to increase or diminish the capital stock, and the number of shares into which the capital stock is to be divided, must be given by publication thereof in a newspaper of general circulation, published in the county, or city and county, in which the principal office of the corporation is located, for at least sixty days, and posting a copy thereof for the same period in a conspicuous place in said office. If the publication be in a daily newspaper there shall be not less than six insertions per week, and if in a weekly newspaper there shall be not less than nine insertions.

2. The capital stock must in no case be diminished to an amount less than the indebtedness of the corporation or the estimated cost of the works which it may be the purpose of the corporation to construct, nor shall the capital stock be increased without the consent at said meeting of the persons holding at least two thirds in value of the stock of the corporation.

3. If at said meeting it be determined to increase or diminish the capital stock, as the case may be, a certificate must be signed by the chairman and secretary of the meeting and a majority of the directors of the corporation, showing a compliance with the requirements of this section in calling and giving notice of the meeting, the amount of increase or diminution of the capital stock and number of shares, if any change has been made, the names of persons consenting to the action, and amount of stock held by them. The certificate must be acknowledged by the persons making it, before an officer competent to take acknowledgment of deeds.

4. The certificate must be filed in the office of the county clerk, where the original articles of incorporation were filed, and a certified copy thereof in the office of the secretary of state, and thereupon the capital stock shall become increased or diminished as in the certificate set forth composed of the number of shares therein specified.

5. If the stockholders, at a meeting called to increase the capital stock of a corporation, direct any special disposition to be made of the stock to be issued in excess of the original capital stock, the directors shall dispose of the same as so directed. [In effect March 6, 1883.]

§ 360. No corporation shall acquire or hold any more real property than may be reasonably necessary for the transaction of its business, or the construction of its works, except as otherwise specially provided. A corporation may acquire real property, as provided in Title VII., Part III., Code of Civil Procedure, when needed for any of the uses and purposes mentioned in said title [§§ 1237-1263]. [In effect July 1, 1874.]

§ 361. It shall be lawful for two or more corporations formed, or that may hereafter be formed, under the laws of this State, for mining purposes, which own or possess mining claims or lands adjoining each other, or lying in the same vicinity, to consolidate their capital stock, debts, property, assets, and franchises, in such manner and upon such terms as may be agreed upon by the respective boards of directors or trustees of such companies so desiring to consolidate their interests; but no such consolidation shall take place without the written consent of the stockholders representing two thirds of the capital stock of each company, and no such consolidation shall, in any way, relieve such companies, or the stockholders thereof, from any and all just liabilities; and in case of such consolidation, due notice of the same shall be given, by advertising, for one month, in at least one newspaper in the county and State where the said mining property is situated, if there be one published therein, and also in one newspaper published in the county, or city and county, where the principal place of business of any of said companies shall be. And when the said consolidation is completed, a certificate thereof, containing the manner and terms of said consolidation, shall be filed in the office of the county clerk of the county in which the original certificate of incorporation of any of said companies shall be filed, and a copy thereof shall be filed in the office of the secretary of state; such certificate shall be signed by a majority of each board of trustees or directors of the original companies, and it shall be their duty to call, within thirty days after the filing of such certificate, and after at least ten days' public notice, a meeting of the stockholders of all of said companies so consolidated, to elect a board of trustees or directors for the consolidated company, for the year thence next ensuing. The said certificate shall also contain all the requirements prescribed by section two hundred and ninety of said Civil Code.

This act shall apply to all corporations formed under the laws of this State, whether formed under the said Civil Code or prior thereto. [In effect March 20, 1876.]

ARTICLE II.

RECORDS.

SECTION 377. Records — of what, and how kept.

378. Other records to be kept by corporations for profit, and others.

§ 377. All corporations for profit are required to keep a record of all their business transactions; a journal of all meetings of their directors, members, or stockholders, with the time and place of holding the same, whether regular or special, and if special, its object, how authorized, and the notice thereof given. The record must embrace every act done or ordered to be done; who were present, and who absent; and, if requested by any director, member, or stockholder, the time shall be noted when he entered the meeting or obtained leave of absence therefrom. On a similar request, the ayes and noes must be taken on any proposition, and a record thereof made. On similar request, the protest of any director, member, or stockholder, to any action or proposed action, must be entered in full — all such records to be open to the inspection of any director, member, stockholder, or creditor of the corporation.

See Penal Code, §§ 565, 569.

§ 378. In addition to the records required to be kept by the preceding section, corporations for profit must keep a book, to be known as the "Stock and Transfer Book," in which must be kept a record of all stock; the names of the stockholders, or members, alphabetically arranged; instalments paid or unpaid; assessments levied and paid or unpaid; a statement of every alienation, sale, or transfer of stock made, the date thereof, and by and to whom; and all such other records as the by-laws prescribe. Corporations for religious and benevolent purposes must provide in their by-laws for such records to be kept as may be necessary. Such Stock and Transfer Book must be kept open to the inspection of any stockholder, member, or creditor.

See Penal Code, §§ 565, 569.

See Act of April 1, 1876, Concerning Statements by Banks and Bankers Appendix, p. 434.

ARTICLE III.

EXAMINATION OF CORPORATIONS, ETC.

SECTION 382. Examination into affairs of corporation, how made by officers of State.

383. Examination made by the legislature

384. Chapter and article may be repealed

§ 382. The attorney general or district attorney, whenever and as often as required by the governor, must examine into the affairs and condition of any corporation in this State, and report such examination, in writing, together with a detailed statement of facts, to the governor, who must lay the same before the legislature; and for that purpose the attorney general or district attorney may administer all necessary oaths to the directors and officers of any corporation, and may examine them on oath in relation to the affairs and condition thereof, and may examine the books, papers, and documents belonging to such corporation, or appertaining to its affairs and condition.

See Penal Code, § 565.

§ 383. The legislature, or either branch thereof, may examine into the affairs and condition of any corporation in this State at all times; and, for that purpose, any committee appointed by the legislature, or either branch thereof, may administer all necessary oaths to the directors, officers, and stockholders of such corporation, and may examine them on oath in relation to the affairs and condition thereof; and may examine the safes, books, papers, and documents belonging to such corporation, or pertaining to its affairs and condition, and compel the production of all keys, books, papers, and documents by summary process, to be issued on application to any court of record or any judge thereof, under such rules and regulations as the court may prescribe.

See Penal Code, § 565.

§ 384. The legislature may at any time amend or repeal this part, or any title, chapter, article, or section thereof, and dissolve all corporations created thereunder; but such amendment or repeal does not, nor does the dissolution of any such corporation, take away or impair any remedy given against any such corporation, its stockholders, or officers, for any liability which has been previously incurred.

ARTICLE IV.

JUDGMENT AGAINST AND SALE OF CORPORATE PROPERTY

SECTION 388. Franchise may be treated as property, and sold under execution.

389. Purchaser to transact business of corporation.

390. Purchaser may recover penalties, &c.

391. Corporation to retain powers after sale.

392. Redemption of franchise.

393. When proceedings under execution may be had.

§ 388. For the satisfaction of any judgment against a corporation authorized to receive tolls, its franchise and all the rights and privileges thereof may be levied upon and sold under execution, in the same manner and with like effect as any other property. [In effect July 1, 1874.]

Code Civ. Proc. § 688.

§ 389. The purchaser at the sale must receive a certificate of purchase of the franchise, and be immediately let into the possession of all property necessary for the exercise of the powers and the receipt of the proceeds thereof, and must thereafter conduct the business of such corporation, with all its powers and privileges, and subject to all its liabilities, until the redemption of the same, as hereinafter provided.

§ 390. The purchaser or his assignee is entitled to recover any penalties imposed by law and recoverable by the corporation for an injury to the franchise or property thereof, or for any damages or other cause, occurring during the time he holds the same, and may use the name of the corporation for the purpose of any action necessary to recover the same. A recovery for damages or any penalties thus had is a bar to any subsequent action by or on behalf of the corporation for the same.

§ 391. The corporation whose franchise is sold, as in this article provided, in all other respects retains the same powers, is bound to the discharge of the same duties, and is liable to the same penalties and forfeitures, as before such sale.

§ 392. The corporation may, at any time within one year after such sale, redeem the franchise, by paying or tendering to the purchaser thereof the sum paid therefor, with ten per

cent. interest thereon, but without any allowance for the toll which he may in the mean time have received; and upon such payment or tender the franchise and all the rights and privileges thereof revert and belong to the corporation, as if no such sale had been made.

§ 393. The sale of any franchise under execution must be made in the county in which the corporation has its principal place of business, or in which the property, or some portion thereof, upon which the taxes are paid, is situated. [In effect July 1, 1874.]

CHAPTER IV.

EXTENSION AND DISSOLUTION OF CORPORATIONS.

SECTION 399. Proceedings to disincorporate.

400. On dissolution, directors to be trustees for creditors.

401. Any corporation may extend its corporate existence, how.

402. How corporations may continue their existence. (Repealed.)

403. Title I. to apply to all corporations with certain exceptions.

§ 399. The dissolution of corporations is provided for :

1. If involuntary — in Chapter V. of Title X., Part II., of the Code of Civil Procedure. [§§ 802-810.]

2. If voluntary — in Title VI., Part III., of the Code of Civil Procedure. [§§ 1227-1233.]

§ 400. Unless other persons are appointed by the court, the directors or managers of the affairs of such corporation at the time of its dissolution are trustees of the creditors and stockholders or members of the corporation dissolved, and have full power to settle the affairs of the corporation.

§ 401. Every corporation formed for a period less than fifty years may, at any time prior to the expiration of the term of its corporate existence, extend such term to a period not exceeding fifty years from its formation. Such extension may be made at any meeting of the stockholders or members, called by the directors expressly for considering the subject, & voted by stockholders representing two thirds of the capital

stock; or by two thirds of the members; or may be made upon the written assent of that number of stockholders or members. A certificate of the proceedings of the meeting upon such vote, or upon such assent, shall be signed by the chairman and secretary of the meeting and a majority of the directors, and be filed in the office of the county clerk, where the original articles of incorporation were filed, and a certified copy thereof in the office of the secretary of state, and thereupon the term of the corporation shall be extended for the specified period. [In effect July 1, 1874.]

§ 402 of said Code is repealed. [In effect July 1, 1874.]

§ 403. The provisions of this title are applicable to every corporation, unless such corporation is excepted from its operation, or unless a special provision is made in relation thereto inconsistent with some provision in this title, in which case the special provision prevails.

See Act of April 1, 1872, Requiring Foreign Corporations to designate Resident upon whom Process may be served, Appendix, p. 478.

TITLE II.

INSURANCE CORPORATIONS.

CHAPTER I. GENERAL PROVISIONS, §§ 414-419.

II. FIRE AND MARINE INSURANCE CORPORATIONS, §§ 424-430.

III. MUTUAL LIFE, HEALTH, AND ACCIDENT INSURANCE CORPORATIONS, §§ 437-458.

CHAPTER I.

GENERAL PROVISIONS.

- ARTICLE 414. Subscriptions to capital stock opened, and how collected
- 415. Purchase and conveyance of real estate.
- 416. Policies, how issued and by whom signed.
- 417. Dividends, of what, and when declared.
- 418. Directors liable for loss on insurance in certain cases.
- 419. Capital to be at least two hundred thousand dollars.
- 420. Exception, capital of one hundred thousand dollars.

§ 414. After the secretary of state issues the certificate of incorporation, as provided in Article I., Chapter I., Title I., of

this part, the directors named in the articles of incorporation must proceed in the manner specified, or in their by-laws, or if none, then in such manner as they may by order adopt, to open books of subscription to the capital stock then unsubscribed, and to secure subscriptions to the full amount of the fixed capital; to levy assessments and instalments thereon, and to collect the same, as in Chapter II. of Title I. provided.

§ 415. No insurance corporation must purchase, hold, or convey real estate, except as hereinafter set forth, to wit:

1. Such as is requisite for its accommodation in the convenient transaction of its business, not exceeding in value one hundred and fifty thousand dollars;

2. Such as is conveyed to it, or to any person for it, by way of mortgage or in trust, or otherwise, to secure or provide for the payment of loans previously contracted, or for moneys due;

3. Such as is purchased at sales upon deeds of trust or judgments obtained or made for such loans or debts;

4. Such as is conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

All such real estate so acquired, which is not requisite for the accommodation of such corporation in the transaction of its business, must be sold and disposed of within five years after such corporation acquired title to the same. No such real estate must be held for a longer period than five years, unless the corporation first procures a certificate from the insurance commissioner that the interest of the corporation will suffer materially by a forced sale of such real estate, in which event the time for the sale may be extended to such time as the insurance commissioner directs in the certificate.

§ 416. All policies made by insurance corporations must be subscribed by the president or vice president, or in case of the death, absence, or disability of those officers, by any two of the directors, and countersigned by the secretary of the corporation. All such policies are as binding and obligatory upon the corporation as if executed over the corporate seal.

§ 417. The directors of every insurance corporation, at such times as their by-laws provide, must make, declare, and pay to the stockholders dividends of so much of the net profits of the corporate business and interest on capital invested as to them appears advisable; but the moneys received and

notes taken for premium on risks which are undetermined and outstanding at the time of making the dividend must not be treated as profits, nor divided, except as provided in Chapter II. of this title.

§ 418. If any insurance corporation is under liabilities for losses to an amount equal to its capital stock, and the president or directors, after knowing the same, make any new or further insurance, the estates of all who make such insurance, or assent thereto, are severally and jointly liable for the amount of any loss which takes place under such insurance.

§ 419. Every company, corporation, or association hereafter formed or organized under the laws of this State for the transaction of business in fire, marine, inland navigation, or life insurance, must have a subscribed capital stock equal to at least two hundred thousand dollars, twenty-five per cent. of which must be paid in previous to the issuance of any policy, and the residue within twelve months from the day of filing the certificate of incorporation. No person, corporation, or association organized or formed under the laws of any other State or country, as a stock company, must transact any such insurance business in this State, unless such person, corporation, or association has a paid-up capital stock equal to at least two hundred thousand dollars in available cash assets, over and above all liabilities for losses reported, expenses, taxes, and reinsurance of all outstanding risks, as provided in section six hundred and two of the Political Code of this State. Nor must any person, corporation, or association, organized or formed under the laws of any other State or country as a mutual insurance company, transact any such insurance business in this State, unless such person, corporation, or association possesses available cash assets equal to at least two hundred thousand dollars, over and above all liabilities for losses reported, expenses, taxes, and reinsurance of all outstanding risks, as provided in said section six hundred and two of the Political Code of this State. [In effect April 1, 1878.]

§ 420. Every company, corporation, or association hereafter formed or organized under the laws of this State for the transaction of business in any kind of insurance not enumerated in section four hundred and nineteen of the Civil Code must have a subscribed capital stock equal to at least one hundred thousand dollars, which must be paid in at the time

and in the manner prescribed for the payment of the capital stock of a corporation organized under section four hundred and nineteen of said Civil Code. No company, corporation, or association, formed or organized under the laws of any other State or country as a stock company, must transact any such insurance business in this State without a paid-up capital stock of not less than one hundred thousand dollars in available cash assets, over and above all liabilities for losses reported, expenses, taxes, and reinsurance of all outstanding risks, as provided in section six hundred and two of the Political Code of this State. Nor must any company, corporation, or association, formed or organized under the laws of any other State or country as a mutual insurance company, transact any such insurance business in this State unless such company, corporation, or association possesses available cash assets equal to at least one hundred thousand dollars over and above all liabilities for losses reported, expenses, taxes, and reinsurance of all outstanding risks, as provided in said section six hundred and two of the Political Code of this State [In effect April 1, 1878.]

CHAPTER II.

FIRE AND MARINE INSURANCE CORPORATIONS.

SECTION 424. Payment of subscriptions. Capital to be all paid in twelve months.

425. Certificate of capital stock paid up to be filed, and when

426. Property which may be insured.

427. Funds may be invested, how.

428. Rate of risk.

429. Amounts to be reserved before making dividends.

430. Reservation by companies with less than \$200,000 capital.

431. Amounts to be reserved by life insurance companies.

§ 424. The entire capital stock of every fire or marine insurance corporation must be paid up in cash within twelve months from the filing of the articles of incorporation, and no policy of insurance must be issued or risk taken until twenty-five per cent. of the whole capital stock is paid up.

§ 425. The president and a majority of the directors must, within thirty days after the payment of the twenty-five per cent. of the capital stock, and also within thirty days after the

payment of the last instalment or assessment of the capital stock limited and fixed, prepare, subscribe, and swear to a certificate setting forth the amount of the fixed capital and the amount thereof paid up at the times respectively in this section named, and file the same in the office of the county clerk of the county where the principal place of business of the corporation is located, and a duplicate thereof, similarly executed, with the insurance commissioner.

§ 426. Every corporation formed for fire or marine insurance, or both, may make insurance on all insurable interests within the scope of its articles of incorporation, and may cause itself to be reinsured.

§ 427. Corporations hereafter organized under the laws of this State for the transaction of business in any kind of insurance may invest their capital and accumulations in the following named securities :

1. In the purchase of or loans upon interest-bearing bonds of the United States government ;

2. In the purchase of or loans upon interest-bearing bonds of any of the States of the United States not in default for interest on such bonds ;

3. In the purchase of or loans upon interest-bearing bonds of any of the counties and incorporated cities and towns of the State of California not in default for interest on such bonds ;

4. In loans upon unincumbered real property, or upon merchandise in warehouse, worth at least one hundred per cent. more than the amount loaned.

But no investment in the securities named in subdivisions one, two, and three of this section must be made in amount exceeding the par value of such securities, nor exceeding their market value. [In effect April 1, 1878.]

§ 428. Fire and marine insurance corporations must never be, on any one risk, whether it is a marine insurance or an insurance against fire, a sum exceeding one tenth part of their capital actually paid in, and intact at the time of taking such risk, without reinsuring the excess above one tenth. [In effect July 1, 1874.]

§ 429. No corporation formed hereafter under the laws of this State, and transacting fire, marine, inland navigation insurance business, or insurance provided for by section four

hundred and twenty of this Code, must make any dividends except from profits remaining on hand after retaining unimpaired :

1. The entire subscribed capital stock ;
2. All the premiums received or receivable on outstanding marine or inland risks, except marine time risks ;
3. A fund equal to one half of the amount of all premium. on all other risks not terminated at the time of making such dividend ;
4. A sum sufficient to pay all losses reported or in course of settlement, and all liabilities for expenses and taxes. [In effect April 1, 1878.]

§ 430. No fire or marine insurance corporation, with a subscribed capital of less than two hundred thousand dollars, must declare any dividends, except from profits remaining on hand after reserving :

1. A sum necessary to form, with the subscribed capital stock, the aggregate sum of two hundred thousand dollars ;
2. All the premiums received or receivable on outstanding marine or inland risks, except marine time risks ;
3. A fund equal to one half the amount of all premiums on fire risks and marine time risks not terminated at the time of making such dividend ;
4. A sum sufficient to pay all losses reported or in course of settlement, and all liabilities for expenses and taxes.

§ 431. No corporation formed under the laws of this State, and transacting life insurance business, must make any dividends, except from profits remaining on hand after retaining unimpaired :

1. The entire capital stock ;
2. A sum sufficient to pay all losses reported or in course of settlement, and all liabilities for expenses and taxes ;
3. A sum sufficient to reinsure all outstanding policies, as ascertained and determined upon the basis of the American Experience Table of Mortality, and interest at the rate of four and one half per cent. per annum. [In effect April 1 1878.]

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TAX.

An Act imposing a Tax on the Issue of Certificates of Stock Corporations.

SECTION 1. It shall be lawful for the secretary of every corporation in the State of California to demand and receive of any person requiring the issue to him of any certificate of stock in such corporation, a fee of ten cents in coin for each certificate, whether such certificate be the original issue or an issue on transfer, and such certificate shall not be delivered by the secretary until such fee shall be paid.

SEC. 2. It shall be the duty of the secretary of every such corporation, on the first Monday in January, April, July, and October, of each year, to make returns, under oath, to the tax collector, or officer acting as tax collector, of the number of certificates issued by the corporation of which he is secretary, during the quarter preceding, and pay to such tax collector the sum of ten cents in coin for each and every certificate so issued by said corporation, except that in the city and county of San Francisco such returns and payments shall be made to the license collector or officer engaged in the collection of licenses in said city and county.

SEC. 3. Such tax collector, or license collector, is hereby authorized and empowered to examine such secretary, under oath, as to the truth of said returns, and to examine, if necessary, the books of such corporation, so far as they relate to the transfer of stock, or issue of certificates, and if the returns are not correct, then he is authorized to commence an action against such corporation in any court of competent jurisdiction, in the name of the people of the State of California, for a penalty of one hundred dollars for each certificate issued by such corporation and not so returned under oath, and several penalties may be joined in such action.

SEC. 4. Any person violating the provisions of section two of this act shall be deemed guilty of a misdemeanor, and false swearing to any return provided in section two, shall be deemed perjury.

SEC. 5. All moneys collected under the provisions of this act shall be paid by such tax collector, or license collector, into the county treasury, and shall become a part of the general fund, or if there shall in any county be no general fund, then the same shall become a part of such fund as the board of supervisors may direct. [Approved April 1, 1878. Took effect first Monday of April. Stats. 1877-8, p. 955.]

CHAPTER III.

MUTUAL LIFE, HEALTH, AND ACCIDENT INSURANCE CORPORATIONS.

- SECTION 437.** Capital stock. Guarantee fund.
- 438. Of what guarantee fund shall consist.
 - 439. What constitutes, and deficiency in fixed capital.
 - 440. Declaration of fixed capital to be filed.
 - 441. Guarantee notes and interest, how disposed of.
 - 442. Insured to be entitled to vote, when.
 - 443. May invest in what securities.
 - 444. Number of directors may be altered, how.
 - 445. Limitations to the holding of stock and in other particulars may be provided for in by-laws.
 - 446. Premiums, how payable.
 - 447. Valuation of policies outstanding, when; how estimated.
 - 448. No stamp required on accident insurance contract.
 - 449. Valuation of policies, retaliatory provisions.
 - 450. Policy to contain what evidence.
 - 451. Non-forfeiture and valuation.
 - 452. Policies continued in force.

§ 437. Every corporation formed for the purpose of mutual insurance on the lives or health of persons, or against accidents to persons for life or any fixed period of time, or to purchase and sell annuities, must have a capital stock of not less than one hundred thousand dollars. It must not make any insurance upon any risk or transact any other business as a corporation until its capital stock is fully paid up in cash, nor until it has also obtained a fund, to be known as a "Guarantee Fund," of not less than two hundred and fifty thousand dollars, as is hereinafter provided. If more than the requisite amount is subscribed, the stock must be distributed *pro rata* among the subscribers. Any subscription may be rejected by the board of directors or the committee thereof, either as to the whole or any part thereof, and must be, so far as rejected, without effect.

§ 438. The guarantee fund mentioned in the preceding section must consist of the promissory notes of solvent parties, approved by the board of directors and by each other, payable to the corporation or its order, and at such times, in such modes, and in such sums, with or without interest, and conformable in all other respects to such requirements as the board of directors prescribe; but the amount of the notes given by any one person must not exceed in the whole the sum of five thousand dollars, exclusive of interest. Such

notes must be payable absolutely and at the option of the corporation; they must be negotiable, and may be indorsed and transferred, or converted into cash, or otherwise dealt with by the corporation, at its discretion, without reference to any contingency of losses or expenses. Such notes, or the proceeds thereof, must remain with the corporation as a fund for the better security of persons dealing with it, and constitute the assets of the corporation, liable for all its debts, obligations, and indebtedness next after its assets from premiums and other sources, exclusive of capital stock, until the net earnings, over and above its expenses, losses, and liabilities, shall have accumulated in cash, or securities in which the net earnings have been invested, to a sum which, with the capital stock, is equal to the aggregate of the original amounts of the guarantee fund and of the capital stock.

§ 439. The sum accumulated as provided in the preceding section, together with the capital stock, shall become and remain the fixed capital of the corporation, not subject to division among the stockholders or parties dealing with it, or to be expended in any manner otherwise than may be required in payment of the corporation's debts and actual expenses, until the business of the corporation is closed, its debts paid, and its outstanding policies and obligations of every kind cancelled or provided for; and if from any cause a deficiency at any time occurs in such fixed capital, no further division of profits must take place until such deficiency has been made up.

§ 440. Whenever the fixed capital of the corporation is obtained as hereinbefore provided, the president of the corporation and its actuary, or its secretary, if there is no actuary, must make a declaration in writing, sworn to before some notary public, of the amount of such fixed capital, and of the particular kinds of property composing the same, with the nature and amount of each kind, which must be filed with the original articles of incorporation, and a copy, certified by the county clerk, must be published for at least four successive weeks, in a newspaper published in the county where the principal business of the corporation is situated. Upon the filing of such declaration the guarantee fund is discharged of its obligations, and all notes of the fund remaining in the control of the corporation, and not affected by any lien thereon, or claim of that nature, must be surrendered by it to the makers thereof, respectively, or other parties entitled to receive the same.

§ 441. Until the guarantee fund is discharged from its obligations, as provided in the preceding section, no note must be withdrawn from the fund, unless another note of equal solvency is substituted therefor, with the approval of the board of directors. The corporation must allow a commission, not exceeding five per cent. per annum, on all such guarantee notes while outstanding, and also interest on all moneys paid on such notes by the parties liable thereon, at the rate of twelve per cent. per annum, payable half yearly until repaid by the corporation, unless the current rate of interest is different from this amount, in which case the rate payable may, from time to time, at intervals of not less than one year, be increased or reduced by the board of directors, so as to conform to the current rate. [In effect July 1, 1874.]

§ 442. After the filing of the declaration of the fixed capital, as in this article provided, the holders of policies of life insurance for the term of life, on which the premiums are not in default, may vote at the election of directors, and have one vote for each one thousand dollars insured by their policies, respectively.

§ 443. The number of directors specified in the articles of incorporation may be altered from time to time during the existence of the corporation by resolution, at the annual meeting of a majority of those entitled to vote at the election of directors, but the number must never be reduced below five.

§ 444. Life, health, and accident insurance corporations may invest their capital stock as follows :

1. In loans upon unincumbered and improved real property within the State of California, which shall be worth at the time of the investment at least forty per cent. more than the sum loaned ;

2. In the purchase of or loans upon interest-bearing bonds, and other securities of the United States and of the State of California ;

3. In the purchase of or loans upon interest-bearing bonds of any of the other States of the Union, or of any county, or incorporated city, or city and county in the State of California ;

4. In the purchase of loans upon any stocks of corporations formed under the laws of this State, except of mining corporations, which shall have, at the time of the investment, a value, in the city and county of San Francisco, of not less than sixty per cent. of their par value, and shall be rated as

first-class securities; but no loans shall be made on any securities specified in subdivisions three and four of this section, in any amount beyond sixty per cent. of the market value of the securities, nor shall any loan be made on the stock of the corporation, or notes or other obligations of its corporators. [In effect July 1, 1874.]

§ 445. The corporation may, by its by-laws, limit the number of shares which may be held by any one person, and make such other provisions for the protection of the stockholders and the better security of those dealing with it as to a majority of the stockholders may seem proper, not inconsistent with the provisions of this title or part.

§ 446. All premiums must be payable wholly in cash, or one half or a greater proportion in cash, and the remainder in promissory notes bearing interest, as may be provided for by the by-laws. Agreements and policies of insurance made by the corporation may be upon the basis of full or partial participation in the profits, or without any participation therein, as may be provided by the by-laws and agreed between the parties.

§ 447. Every life insurance corporation organized under the laws of this State must, on or before the first day of February of each year, furnish the insurance commissioner the necessary data for determining the valuation of all its policies outstanding on the thirty-first day of December then next preceding. And every life insurance company organized under the laws of any other State or country, and doing business in this State, must, upon the written requisition of the commissioner, furnish him, at such time as he may designate, the requisite data for determining the valuation of all of its policies then outstanding. Such valuations must be based upon the rate of mortality established by the American experience life-table and interest at four and one half per cent. per annum. For the purpose of making the valuations, the insurance commissioner is authorized to employ a competentuary, whose compensation for such valuations shall be three cents for each thousand dollars of insurance; to be paid by the respective companies whose policies are thus valued. [In effect July 1, 1874.]

§ 448. No stamp is required nor stamp duty exacted on any contract of insurance, when such contract insures against accident which may result in injury or death.

See Act of March 28, 1874, Relative to Mutual Beneficial and Relief Sociations, Appendix, p. 481.

§ 449. When the certificate of the insurance commissioner of this State, of the valuation of the policies of a life insurance company, as provided in section four hundred and forty-seven of the Civil Code of this State, issued to any company organized under the laws of this State, shall not be accepted by the insurance authorities of any other State, in lieu of a valuation of the same, by the insurance officer of such other State, then every company organized under the laws of such other State, doing business in this State, shall be required to have a separate valuation of its policies made under the authority of the insurance commissioner of this State, as provided in section four hundred and forty-seven of the Civil Code. [In effect July 1, 1874.]

§ 450. Every contract or policy of insurance hereafter made by any person or corporation organized under the laws of this State, or under those of any other State or country, with and upon the life of a resident of this State, and delivered within this State, shall contain, unless specifically contracted between the insurer and the insured for tontine insurance, or for other term or paid-up insurance, a stipulation that when, after three full annual premiums shall have been paid on such policy, it shall cease or become void solely by the non-payment of any premium when due, its entire net reserve, by the American Experience Mortality, and interest at four and one-half per cent. yearly, less any indebtedness to the company on such policy, shall be applied by such company as a single premium, at such company's published rates in force at the date of original policy, but at the age of the insured at time of lapse, either to the purchase of non-participating term insurance for the full amount insured by such policy, or upon the written application by the owner of such policy, and the surrender thereof to such company within three months from such non-payment of premium, to the purchase of a non-participating paid-up policy, payable at the time the original policy would be payable if continued in force; both kinds of insurance to be subject to the same conditions, except as to payment of premiums, as those of the original policy. It may be provided, however, in such stipulation, that no part of such term insurance shall be due or payable, unless satisfactory proofs of death be furnished to the insuring company within one year after death, and that, if death shall occur within three years after such non-payment of premium, and during such term of insurance, there shall

be deducted from the amount payable the sum of all the premiums that would have become due on the original policy if it had continued in force. If the reserve on endowment policies be more than enough to purchase temporary insurance, as aforesaid, to the end of the endowment term, the excess shall be applied to the purchase of pure endowment insurance, payable at the end of the term, if the insured be then living. If any life insurance corporation or company shall deliver to any person in this State a policy of insurance upon the life of any person residing in this State, not in conformity with the provisions of this section, the right of such corporation or company to transact business in this State shall thereupon and thereby cease and terminate, and the Insurance Commissioner shall immediately revoke the certificate of such corporation or company authorizing it to do business in this State, and publish such revocation, daily, for the period of two weeks, in two daily newspapers, one published in the City of San Francisco, and the other in the City of Sacramento.

[Approved April 26, 1880.]

§§ 451, 452. Sections four hundred and fifty-one and four hundred and fifty-two of said Civil Code are hereby repealed.

[Approved April 26, 1880.]

TITLE III.

RAILROAD CORPORATIONS.

CHAPTER I. OFFICERS AND CORPORATE STOCK, §§ 454-459.

II. ENUMERATION OF POWERS, §§ 465-478.

III. BUSINESS, HOW CONDUCTED, §§ 479-491.

CHAPTER I.

OFFICERS AND CORPORATE STOCK.

SECTION 454. Directors to be elected, when.

455. Additional provisions in assessment and transfer of stock.

456. Corporations may borrow money and issue bonds. Limitation of amount.

457. To provide a sinking fund to pay bonds.

458. Capital stock to be fixed.

459. Certificate of payment of fixed capital stock.

§ 454. Directors of railroad corporations may be elected at a meeting of the stockholders other than the annual meeting, as a majority of the fixed capital stock may determine, or as the by-laws may provide; notice thereof to be given as provided for notices of meetings to adopt by-laws in Article II, Chapter I., Title I., of this part.

§ 455. No stock in any railroad corporation is transferable until all the previous calls or instalments thereon have been fully paid in; nor is any such transfer valid, except as between the parties thereto, unless at least twenty per cent. has been paid thereon and certificates issued therefor, and the transfer approved by the board of directors.

§ 456. Railroad corporations may borrow, on the credit of the corporation and under such regulations and restrictions as the directors thereof, by unanimous concurrence, may impose, such sums of money as may be necessary for constructing and completing their railroad, and may issue and dispose of bonds or promissory notes therefor, in denominations of not less than five hundred dollars, and at a rate of interest not exceeding ten per cent. per annum; and may also issue bonds or promissory notes, of the same denomination and rate of in-

terest, in payment of any debts or contracts for constructing and completing their road, with its equipments and all else relative thereto, and for the purchase of railroads and other property within the purposes of the corporation. The amount of bonds or promissory notes issued for such purposes must not exceed, in all, the amount of their capital stock; and to secure the payment of such bonds or notes, they may mortgage their corporate property and franchises, or may secure the payment of such bonds or notes by deed of trust of their corporate property and franchises. Any person or corporation formed under the laws of this State or of any other State within the United States, that the directors of the railroad corporation may by unanimous concurrence select, may be trustees in such deed of trust. [In effect April 15, 1880.]

Penal Code, § 586.

§ 457. The directors must provide a sinking fund, to be specially applied to the redemption of such bonds on or before their maturity, and may also confer on any holder of any bond or note so issued, for money borrowed or in payment of any debt or contract for the construction and equipment of such road, the right to convert the principal due or owing thereon into stock of such corporation, at any time within eight years from the date of such bonds, under such regulations as the directors may adopt.

Penal Code, §§ 586-7.

§ 458. When, at any time after filing the articles of incorporation, it is ascertained that the capital stock therein set out is either more or less than actually required for constructing, equipping, operating, and maintaining the road, by a two-third vote of the stockholders the capital stock must be fixed, and a certificate thereof, and of the proceedings had to fix the same, must be made out and filed in the office of the secretary of state.

§ 459. Within thirty days after the payment of the last instalment of the fixed capital stock of any railroad corporation organized under this title and part, the president and secretary, and a majority of the directors thereof, must make, subscribe, and file in the office of the secretary of state a certificate stating the amount of the fixed capital stock, and that the whole thereof has been paid in. The certificate must be verified by the affidavit of the president and secretary.

CHAPTER II.

ENUMERATION OF POWERS.

SECTION 465 Enumeration of powers:

1. To survey road ;
2. May accept real estate ;
3. May acquire real estate ;
4. Lay out road, how wide ;
5. Where may construct road ;
6. May cross or connect roads ;
7. May purchase land, timber, stone, gravel, &c. ;
8. Carry persons and freight ;
9. Erect necessary buildings ;
10. Regulate time and freights, subject to legislation ;
11. Regulate force and speed.
466. Map and profile to be filed.
467. May change line of road.
468. Forfeiture of franchise.
469. Crossings and intersections. Condemnation.
470. Not to use streets, alleys, or water in cities or towns, except by a two-third vote of the city or town authorities.
471. Railroads through cities not to charge fare to and from points therein.
472. When crossing railroads or highways, how other lands are acquired.
473. Corporations may consolidate. Publication of notice. Copy to be filed.
474. State lands granted for use of corporations.
475. Grant not to embrace town lots.
476. Wood, stone, and earth may be taken from State lands.
477. Lands to revert to State, when.
478. Selections made, how proved and certified to.

§ 465. Every railroad corporation has power :

1. To cause such examination and surveys to be made as may be necessary to the selection of the most advantageous route for the railroad ; and for such purposes their officers, agents, and employees may enter upon the lands or waters of any person, subject to liability for all damages which they do thereto ;

2. To receive, hold, take, and convey, by deed or otherwise, as a natural person, such voluntary grants and donations of real estate and other property which may be made to it to aid and encourage the construction, maintenance, and accommodation of such railroad ;

3. To purchase, or by voluntary grants or donations to receive, enter, take possession of, hold, and use all such real estate and other property as may be absolutely necessary for the

construction and maintenance of such railroad, and for all stations, depots, and other purposes necessary to successfully work and conduct the business of the road ;

4. To lay out its road, not exceeding nine rods wide, and to construct and maintain the same, with a single or double track, and with such appendages and adjuncts as may be necessary for the convenient use of the same ;

5. To construct their road across, along, or upon any stream of water, watercourse, roadstead, bay, navigable stream, street, avenue, or highway, or across any railway, canal, ditch, or flume which the route of its road intersects, crosses, or runs along, in such manner as to afford security for life and property ; but the corporation shall restore the stream or watercourse, road, street, avenue, highway, railroad, canal, ditch, or flume thus intersected to its former state of usefulness, as near as may be, or so that the railroad shall not unnecessarily impair its usefulness or injure its franchise ;

6. To cross, intersect, join, or unite its railroad with any other railroad, either before or after construction, at any point upon its route, and upon the grounds of such other railroad corporation, with the necessary turnouts, sidings, and switches, and other conveniences in furtherance of the objects of its connections ; and every corporation whose railroad is, or shall be hereafter, intersected by any new railroad, shall unite with the owners of such new railroad in forming such intersections and connections, and grant facilities therefor ; and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points or the manner of such crossings, intersections, and connections, the same shall be ascertained and determined as is provided in Title VII., Part III., Code of Civil Procedure. [§§ 1237-1263.]

7. To purchase lands, timber, stone, gravel, or other materials, to be used in the construction and maintenance of its road, and all necessary appendages and adjuncts, or acquire them in the manner provided in Title VII., Part III., Code of Civil Procedure, for the condemnation of lands ; and to change the line of its road, in whole or in part, whenever a majority of the directors so determine, as is provided hereinafter ; but no such change must vary the general route of such road, as contemplated in its articles of incorporation ;

8. To carry persons and property on their railroad, and receive tolls or compensation therefor ;

9. To erect and maintain all necessary and convenient buildings, stations, depots, fixtures, and machinery for the

accommodation and use of their passengers, freight, and business ;

10. To regulate the time and manner in which passengers and property shall be transported, and the tolls and compensation to be paid therefor within the limits prescribed by law, and subject to alteration, change, or amendment by the legislature at any time ;

11. To regulate the force and speed of their locomotives, cars, trains, or other machinery used and employed on their road, and to establish, execute, and enforce all needful and proper rules and regulations for the management of its business transactions usual and proper for railroad corporations.

53 Cal. 227.

§ 466. Every railroad corporation in this State must, within a reasonable time after its road is finally located, cause to be made a map and profile thereof, and of the land acquired for the use thereof, and the boundaries of the several counties through which the road may run, and file the same in the office of the secretary of state ; and also like maps of the parts thereof located in different counties, and file the same in the office of the clerk of the county in which such parts of the road are, there to remain of record forever. The maps and profiles must be certified by the chief engineer, the acting president and secretary of such company, and copies of the same, so certified and filed, be kept in the office of the secretary of the corporation, subject to examination by all parties interested.

§ 467. If, at any time after the location of the line of the railroad and the filing of the maps and profiles thereof, as provided in the preceding section, it appears that the location can be improved, the directors may, as provided in subdivision 7, section 465, alter or change the same, and cause new maps and profiles to be filed, showing such changes, in the same offices where the originals are of file, and may proceed, in the same manner as the original location was acquired, to acquire and take possession of such new line, and must sell or relinquish the lands owned by them for the original location, within five years after such change. No new location as herein provided, must be so run as to avoid any points named in their articles of incorporation.

§ 468. Every railroad corporation must, within two years after filing its original articles of incorporation, begin the con-

struction of its road, and must every year thereafter complete and put in full operation at least five miles of its road, until the same is fully completed; and upon its failure so to do, for the period of one year, its right to extend its road beyond the point then completed is forfeited.

§ 469. Whenever the track of one railroad intersects or crosses the track of another railroad, whether the same be a street railroad, wholly within the limits of a city or town, or other railroad, the rails of either or each road must be so cut and adjusted as to permit the passage of the cars on each road with as little obstruction as possible; and, in case the persons or corporations owning the railroads cannot agree as to the compensation to be made for cutting and adjusting the rails, the condemnation of the right of way over the one for the use of the other road may be had in proceedings under Title VII., Part III., Code of Civil Procedure, and the damages assessed and the right of way granted as in other cases. [§§ 1237-1263.]

§ 470. No railroad corporation must use any street, alley, or highway, or any of the land or water, within any incorporated city or town, unless the right to so use the same is granted by a two-third vote of the town or city authority from which the right must emanate.

~~§ 471. No railroad corporation, other than street railroads, availing itself of the provisions of the preceding section, and acquiring right of way from city authorities, must ever use their road for street railroad purposes, or for the purpose of carrying passengers, for consideration, from any point to another in the same city, except such roads as are or may be built on the prismoidal or other elevated railroad plan, and chartered for street railroad purposes; provided, that such elevation shall be not less than fourteen feet above the street level. [Repealed April 1, 1878.]~~

§ 472. Whenever the track of such railroad crosses a railroad or highway, such railroad or highway may be carried under, over, or on a level with the track, as may be most expedient; and in cases where an embankment or cutting necessitates a change in the line of such railroad or highway, the corporation may take such additional lands and material as are necessary for the construction of such road or highway on

such new line. If such other necessary lands cannot be had otherwise, they may be condemned as provided in Title VII., Part III., Code of Civil Procedure; and when compensation is made therefor, the same becomes the property of the corporation. [§§ 1237-1263.]

§ 473. Two or more railroad corporations may consolidate their capital stock, debts, property, assets, and franchises in such manner as may be agreed upon by their respective boards of directors. No such amalgamation or consolidation must take place without the written consent of the holders of three fourths in value of all the stock of each corporation; and no such amalgamation or consolidation must in any way relieve such corporation or the stockholders thereof from any and all just liabilities. In case of such amalgamation or consolidation, due notice of the same must be given, by advertisement for one month in at least one newspaper in each county, if there be one published therein, into or through which such roads run, and also for the same length of time in one paper published in Sacramento and in two papers published in San Francisco; and when the consolidation and amalgamation is completed, a copy of the new articles of incorporation must be filed in the office of the secretary of state.

§ 474. There is granted to every railroad corporation the right of way for the location, construction, and maintenance of their necessary works, and for every necessary adjunct thereto, over any swamp, overflowed, or other public lands of the State not otherwise disposed of or in use, not in any case exceeding in length or width that which is necessary for the construction of such works and adjuncts, or for the protection thereof, not in any case to exceed two hundred feet in width.

§ 475. The grants mentioned in the preceding section do not apply to public lands of the State within the corporate limits of towns and cities, or within three miles thereof.

§ 476. The right to take from any of the lands belonging to the State, adjacent to the works of the corporation, all materials, such as wood, stone, and earth, naturally appurtenant thereto, which may be necessary and convenient for the original construction of its works and adjuncts, is granted to such corporations.

§ 477. If any corporation receiving State lands or appurtenances thereunder is dissolved, ceases to exist, is discontinued, or the route or line of its works is so changed as not to cover or cross the lands selected, or the use of the lands selected is abandoned, such selected lands revert, and the title thereto is reinvested in the State or its grantees, free from all such uses.

§ 478. When any selection of the right of way, or land for an adjunct to the works of a railroad corporation, is made by any corporation, the secretary thereof must transmit to the surveyor general, comptroller of state, and recorder of the county in which the selected lands are situate, a plat of the lands so selected, giving the extent thereof and uses for which the same is claimed or desired, duly verified to be correct; and, if approved, the surveyor general must so indorse the plat, and issue to the corporation a permit to use the same, unless, on petition properly presented to the court, a review is had and such use prohibited.

CHAPTER III.

BUSINESS, HOW CONDUCTED.

- SMOKE** 479. Checks to be affixed to all baggage. Damages.
 480. Annual report to be verified. Form of report.
 481. Duties of corporation.
 482. Corporation to pay damages for refusal.
 483. Furnish room inside passenger cars, and be responsible for damages occurring on freight and other cars.
 484. Corporations to post printed regulations, and not responsible for damages in violation of rules.
 485. To pay damages. Not liable in certain cases. Corporation may recover damages, when.
 486. Regulations of trains. Penalty.
 487. Passenger refusing to pay fare.
 488. Officers to wear badge.
 489. Rates of charges.
 490. Passenger tickets, how issued, and to be good for six months.
 491. Character of iron to be used.

§ 479. A check must be affixed to every package or parcel of baggage when taken for transportation by any agent or employee of such railroad corporation, and a duplicate thereof given to the passenger or person delivering the same

in his behalf; and if such check is refused on demand, the railroad corporation must pay to such passenger the sum of twenty dollars, to be recovered in an action for damages; and no fare or toll must be collected or received from such passenger, and if such passenger has paid his fare, the same must be returned by the conductor in charge of the train; and on producing the check, if his baggage is not delivered to him by the agent or employee of the railroad corporation, he may recover the value thereof from the corporation.

§ 480. Every railroad corporation must make an annual report to the secretary of state, or other officer designated by law, of its operations for each year, ending on the thirty-first day of December, verified by the oaths of the president or acting superintendent of operations, the secretary and treasurer of such corporation, and file it in the office of the secretary of state, or such other designated officer, by the twentieth day of February, which must state:

1. The capital stock, and the amount thereof actually paid in;
2. The amount expended for the purchase of lands for the construction of the road, for buildings, and for engines and cars, respectively;
3. The amount and nature of its indebtedness, and the amount due the corporation;
4. The amount received from the transportation of passengers, property, mails, and express matter, and from other sources;
5. The amount of freight, specifying the quantity in tons;
6. The amount paid for repairs of engines, cars, buildings, and other expenses, in gross, showing the current expenses of running such road;
7. The number and amount of dividends, and when paid;
8. The number of engine-houses and shops, of engines and cars, and their character.

§ 481. Every such corporation must start and run their cars, for the transportation of persons and property, at such regular times as they shall fix by public notice, and must furnish sufficient accommodations for the transportation of all such passengers and property as, within a reasonable time previous thereto, offer or is offered for transportation, at the place of starting, at the junction of other railroads, and at siding and stopping places established for receiving and discharging way passengers and freight; and must take, trans-

port, and discharge such passengers and property at, from, and to such places, on the due payment of tolls, freight, or fare therefor.

§ 482. In case of refusal by such corporation or their agents so to take and transport any passengers or property, or to deliver the same, at the regular appointed places, such corporation must pay to the party aggrieved all damages which are sustained thereby, with costs of suit.

§ 483. Every railroad corporation must furnish, on the inside of its passenger cars, sufficient room and accommodations for all passengers to whom tickets are sold for any one trip, and for all persons presenting tickets entitling them to travel thereon; and when fare is taken for transporting passengers on any baggage, wood, gravel, or freight car, the same care must be taken and the same responsibility is assumed by the corporation as for passengers on passenger cars.

§ 484. Every railroad corporation must have printed and conspicuously posted on the inside of its passenger cars its rules and regulations regarding fare and conduct of its passengers; and in case any passenger is injured on or from the platform of a car, or on any baggage, wood, gravel, or freight car, in violation of such printed regulations, or in violation of positive verbal instructions or injunctions given to such passenger in person by any officer of the train, the corporation is not responsible for damages for such injuries, unless the corporation failed to comply with the provisions of the preceding section.

§ 485. Railroad corporations must make and maintain a good and sufficient fence on either or both sides of their track and property. In case they do not make and maintain such fence, if their engine or cars shall kill or maim any cattle or other domestic animals upon their line of road which passes through or along the property of the owner thereof, they must pay to the owner of such cattle or other domestic animals a fair market price for the same, unless it occurred through the neglect or fault of the owner of the animal so killed or maimed. Railroad corporations paying to the owner of the land through or along which their road is located an agreed price for making and maintaining such fence, or paying the cost of such fence, with the award of damages allowed for the

right of way for such railroad, are relieved and exonerated from all claims for damages arising out of the killing or maiming any animals of persons who thus fail to construct and maintain such fence; and the owners of such animals are responsible for any damages or loss which may accrue to such corporation from such animals being upon their railroad track, resulting from the non-construction of such fence, unless it is shown that such loss or damage occurred through the negligence or fault of the corporation, its officers, agents, or employees.

§ 486. A bell, of at least twenty pounds' weight, must be placed on each locomotive engine, and be rung at a distance of at least eighty rods from the place where the railroad crosses any street, road, or highway, and be kept ringing until it has crossed such street, road, or highway; or a steam-whistle must be attached, and be sounded, except in cities, at the like distance, and be kept sounding at intervals until it has crossed the same, under a penalty of one hundred dollars for every neglect, to be paid by the corporation operating the railroad, which may be recovered in an action prosecuted by the district attorney of the proper county, for the use of the State. The corporation is also liable for all damages sustained by any person, and caused by its locomotives, train, or cars, when the provisions of this section are not complied with.

Omitting to ring the bell, a misdemeanor. Penal Code, § 390.
52 Cal. 604; 56 Cal. 516.

§ 487. If any passenger refuses to pay his fare, or to exhibit or surrender his ticket, when reasonably requested so to do, the conductor and employees of the corporation may put him and his baggage out of the cars, using no unnecessary force, at any usual stopping place, or near any dwelling-house, on stopping the train.

§ 488. Every conductor, baggage-master, engineer, brakeman, or other employee of any railroad corporation, employed on a passenger train or at stations for passengers, must wear upon his hat or cap, or in some conspicuous place on the breast of his coat, a badge, indicating his office or station, and the initial letters of the name of the corporation by which he is employed. No collector or conductor, without such badge, is authorized to demand or to receive from any passenger any fare, toll, or ticket, or exercise any of the powers of his office or station; and no other officer or employee, without such badge, has any authority to meddle or interfere with any passenger or property.

§ 489. All railroad corporations must fix and publish their rates of charges for freightage and fares from one depot to another, on their various lines of road in this State, graduated as follows :

1. One rate of charges per mile for a distance of one hundred miles or over ;

2. One rate for a distance of seventy-five and less than one hundred miles, charging not exceeding ten per cent. per mile more than the first rate ;

3. One rate for a distance of fifty and less than seventy-five miles, charging not exceeding fifteen per cent. per mile more than the first rate ;

4. One rate for a distance of twenty-five and less than fifty miles, charging not exceeding twenty per cent. per mile more than the first rate ;

5. One rate for a distance not exceeding twenty-five miles, charging not exceeding twenty-five per cent. per mile more than the first rate.

But in no case, nor in any class of charges hereinbefore named, shall any railroad corporation charge or receive more than ten cents per mile for each passenger, nor fifteen cents per mile for each ton of freight transported on its road. For every transgression of these limitations the corporation is liable, to the party suffering thereby, treble the entire amount of fare or freightage so charged to such party. In no case is the corporation required to receive less than twenty-five cents for any one lot of freight for any distance.

Asking or receiving illegal fare a misdemeanor. Penal Code, § 525.

§ 490. Every railroad corporation must provide, and, on being tendered the fare therefor fixed as provided in the preceding section, furnish to every person desiring a passage on their passenger cars a ticket which entitles the purchaser to a ride, and to the accommodations provided on their cars, from the depot or station where the same is purchased to any other depot or station on the line of their road. Every such ticket entitles the holder thereof to ride on their passenger cars to the station or depot of destination, or any intermediate station, and from any intermediate station to the depot of destination designated in the ticket, at any time within six months thereafter. Any corporation failing so to provide and furnish tickets, or refusing the passage which the same calls for when sold, must pay to the person so refused the sum of two hundred dollars.

§ 491. All railroads, other than street railroads and those used exclusively for carrying freight or for mining purposes, built by corporations organized under this chapter, must be constructed of the best quality of iron or steel rails, known as T or H rail, or other pattern of equal utility. [In effect July 1, 1874.]

TITLE IV.

STREET RAILROAD CORPORATIONS.

SECTION 497. Authority to lay street railroad track, how obtained.

498. Restrictions and limitations to the grant of the right of way.

499. Two corporations may use the same track.

500. Crossing tracks. Obstructions.

501. Rates of fare, speed, &c.

502. Time allowed for completion of work of laying down track.

503. May make further regulations and rules.

504. Penalty for overcharging.

505. To provide and furnish passenger tickets. Penalty.

506. Trial, proof, and limitation.

507. City or town to reserve certain rights.

508. License to be paid to city or town.

509. Track for grading purposes.

510. What provisions of Title III. are applicable to street railroads.

511. Title applicable to natural persons alike with corporations.

§ 497. Authority to lay railroad tracks through the streets and public highways of any incorporated city or town may be obtained for a term of years, not exceeding fifty, from the trustees, council, or other body to whom is intrusted the government of the city or town, under such restrictions and limitations, and upon such terms, and payment of license tax, as the city or town authority may provide. In no case must permission be granted to propel cars upon such tracks otherwise than by horses, mules, or by wire ropes running under the streets, and moved by stationary steam-engines, unless for special reasons, as hereinafter provided. [In effect March 3, 1876.]

57 Cal. 160.

§ 498. The city or town authorities, in granting the right of way to street railroad corporations, in addition to the restrictions which they are authorized to impose, must require

a strict compliance with the following conditions, except in the cases of prismoidal or other elevated railways. In such cases, said railway shall be required to be constructed in such a manner as will present the least obstruction to the freedom of the streets in which it may be erected when allowed by the granting power. *First*, to construct their tracks on those portions of streets designated in the ordinance granting the right, which must be, as nearly as possible, in the middle thereof. *Second*, to plank, pave, or macadamize the entire length of the street used by their track, between the rails, and for two feet on each side thereof, and between the tracks, if there be more than one, and to keep the same constantly in repair, flush with the street, and with good crossings. *Third*, that the tracks must not be more than five feet wide within the rails, and must have a space between them sufficient to allow the cars to pass each other freely. [In effect April 3, 1876.]

§ 499. Two corporations may be permitted to use the same street, each paying an equal portion for the construction of the track; but in no case must two railroad corporations occupy and use the same street or track for a distance of more than five blocks.

54 Cal. 74; 57 Cal. 499.

§ 500. Any proposed railroad track may be permitted to cross any track already constructed, the crossing being made as provided in Chapter II., Title III., of this part. In laying down the track and preparing therefor, not more than one block must be obstructed at any one time, nor for a longer period than ten working days.

§ 501. The rates of fare on the cars must not exceed ten cents for one fare, for any distance under three miles. The cars must be of the most approved construction for comfort and convenience of passengers, and provided with brakes to stop the same, when required. The rate of speed must not be greater than eight miles per hour. A violation of the provisions of this section subjects the corporation to a fine of one hundred dollars for each offence.

§ 502. Work to construct the railroad must be commenced within one year from the date of the ordinance granting the right of way and the filing of articles of incorporation, and the same must be completed within three years thereafter

A failure to comply with these provisions works a forfeiture of the right of way as well as of the franchise, unless the uncompleted portion is abandoned by the corporation, with the consent of the authorities granting the right of way — such abandonment and consent to be in writing.

57 Cal. 160.

§ 503. Cities and towns in or through which street railroads run may make such further regulations for the government of such street railroads as may be necessary to a full enjoyment of the franchise and the enforcement of the conditions provided herein.

§ 504. Any corporation, or agent or employee thereof, demanding or charging a greater sum of money for fare on the cars of such street railroad than that fixed, as provided in this title, forfeits to the person from whom such sum is received, or who is thus overcharged, the sum of two hundred dollars, to be recovered in a civil action, in any justice's court having jurisdiction thereof, against the corporation.

§ 505. Every street railroad corporation must provide, and, on request, furnish to all persons desiring a passage on its cars, any required quantity of passenger tickets or checks, each to be good for one ride. Any corporation failing to provide and furnish tickets or checks to any person desiring to purchase the same at not exceeding the rate hereinbefore prescribed, shall forfeit to such person the sum of two hundred dollars, to be recovered as provided in the preceding section, *provided*, that the provisions of this section shall not apply to such street railroad corporations as charge but five cents fare. [In effect March 13, 1883.]

§ 506. Upon the trial of an action for any of the sums forfeited, as provided in the two preceding sections, proof that the person demanding or receiving the money as fare, or for the sale of the ticket or check, was at the time of making the demand or receiving the money, engaged in an office of the corporation, or vehicle belonging to the corporation, shall be *prima facie* evidence that such person was the agent, servant, employee of the corporation, to receive the money and give a ticket or check mentioned. [In effect July 1, 1874.]

§ 507. In every grant to construct street railroads, the right to grade, sewer, pave, macadamize, or otherwise im

prove, alter, or repair the streets or highways, is reserved to the corporation, and cannot be alienated or impaired; such work to be done so as to obstruct the railroad as little as possible; and, if required, the corporation must shift its rails so as to avoid the obstructions made thereby. [In effect July 1, 1874.]

§ 508. Each street railroad corporation must pay to the authorities of the city, town, county, or city and county, as a license upon each car, such sum as the authorities may fix, not exceeding fifty dollars per annum in the city of San Francisco, nor more than twenty-five dollars per annum in other cities or towns. Where any street railroad connects or runs through two or more cities or towns, a proportionate or equal share of such license tax must be paid to each of the cities or towns; and no such license tax is due the county authorities where the same is paid to any city or town authority.

§ 509. The right to lay down a track for grading purposes, and maintain the same for a period not to exceed three years, may be granted by the corporate authorities of any city or town, or city and county, or supervisors of any city or county, but no such track must remain more than three years upon any one street; and it must be laid level with the street, and must be operated under such restrictions as not to interfere with the use of the street by the public. The corporate authorities of any city or town, or city and county, may grant the right to use steam or any other motive power in propelling the cars used on such grading track, when public convenience or utility demands it, but the reasons therefor must be set forth in the ordinance, and the right to rescind the ordinance at any time reserved.

§ 510. Street railroads are governed by the provisions of Title III. of this part, so far as they are applicable, unless such railroads are therein specially excepted. [§§ 454-491.] [In effect July 1, 1874.]

§ 511. When a street railroad is constructed, owned, or operated by any natural person, this title is applicable to such person in like manner as it is applicable to corporations.

TITLE V.

WAGON ROAD CORPORATIONS.

SECTION 512. Three commissioners to act with surveyor.

518. Survey and map to be filed and approved by supervisors.

514. Tolls, &c., to be collected. Penalty for taking unlawful tolls.

515. No tolls to be charged on highways or public roads.

516. Rates of toll to be posted at gate.

517. Toll gatherer may detain persons until they pay toll.

518. Toll gatherer not to detain any person unnecessarily.

519. Persons avoiding tolls to pay five dollars.

520. Penalties for trespasses on property of corporation.

521. When capital invested is repaid, tolls to be reduced, &c.

522. May mortgage and hypothecate corporate property.

523. This title applies to natural persons as well as corporations.

§ 512. Where a corporation is formed for the construction and maintenance of a wagon road, the road must be laid out as follows:

Three commissioners must act in conjunction with the surveyor of the corporation, two to be appointed by the board of supervisors of the county through which the road is to run, and one by the corporation, who must lay out the proposed road and report their proceedings, together with the map of the road, to the supervisors, as provided in the succeeding section. [In effect July 1, 1874.]

§ 513. When the route is surveyed, a map thereof must be submitted to and filed with the board of supervisors of each county through or into which the road runs, giving its general course and the principal points to or by which it runs, and its width, which must in no case exceed one hundred feet, and the supervisors must either approve or reject the survey. If approved, it must be entered of record on the journal of the board, and such approval authorizes the use of all public lands and highways over which the survey runs; but the board of supervisors must require the corporation, at its own expense, and the corporation must so change and open the highway so taken and used as to make the same as good as they were before the appropriation thereof; and must so conduct all crossings of public highways over and by its road, and its toll gates, as not to hinder or obstruct the use of the same.

§ 514. All wagon road corporations may bridge or keep ferries on streams on the line of their road, and must do all things necessary to keep the same in repair. They may take such tolls only on their roads, ferries, or bridges, as are fixed by the board of supervisors of the proper county through which the road passes, or in which the ferry or bridge is situate, except that in the counties of Klamath, Butte, Del Norte, Plumas, Humboldt, and Sierra, the directors may fix their own tolls; but in no case must the tolls be more than sufficient to pay fifteen per cent. nor less than ten per cent. per annum on the cost of construction, after paying for repairs and other expenses for attending to the roads, bridges, or ferries. If tolls, other than as herein provided, are charged or demanded, the corporation forfeits its franchise, and must pay to the party so charged one hundred dollars as liquidated damages. [Approved March 28, 1874. Sixty days.]

§ 515. When any highway or public road is taken and used by any wagon road corporation as a part of its road, the corporation must not place a toll gate on or take tolls for the use of such highway or public road by teamsters, travellers, drovers, or any one transporting property over the same.

§ 516. The corporation must affix and keep up, at or over each gate, or in some conspicuous place, so as to be conveniently read, a printed list of the rates of toll levied and demanded.

§ 517. Each toll gatherer may prevent from passing through his gate persons leading or driving animals or vehicles subject to toll, until they shall have paid, respectively, the tolls authorized to be collected.

§ 518. Every toll gatherer who, at any gate, unreasonably hinders or delays any traveller or passenger liable to the payment of toll, or demands or receives from any person more than he is authorized to collect, for each offence forfeits the sum of twenty-five dollars to the person aggrieved.

§ 519. Every person who, to avoid the payment of the legal toll, with his team, vehicle, or horse, turns out of a wagon, turnpike, or plank road, or passes any gate thereon on ground adjacent thereto, and again enters upon such road for each offence forfeits the sum of five dollars to the corporation injured.

§ 520. Every person who :

1. Wilfully breaks, cuts down, defaces, or injures any milestone or post on any wagon, turnpike, or plank road ; or,

2. Wilfully breaks or throws down any gate on such road ; or,

3. Digs up or injures any part of such road, or anything thereunto belonging ; or,

4. Forcibly or fraudulently passes any gate thereon without having paid the legal toll ;

For each offence forfeits to the corporation injured the sum of twenty-five dollars, in addition to the damages resulting from his wrongful act.

§ 521. The entire revenue derived from the road, shall be appropriated : first, to repayment to the corporation of the costs of its construction, together with the incidental expenses incurred in collecting tolls and keeping the road in repair ; and, second, to the payment of the dividend among its stockholders, as provided in section five hundred and fourteen. When the repayment of the cost of construction is completed, the tolls must be so reduced as to raise no more than an amount sufficient to pay said dividend, and incidental expenses, and to keep the road in good repair. [In effect July 1, 1874.]

§ 522. The corporation may mortgage or hypothecate its road and other property for funds with which to construct or repair their road, but no mortgage or hypothecation is valid or binding unless at least twenty-five per cent. of the capital stock subscribed has been paid in and invested in the construction of the road and appurtenances, and then only after an affirmative vote of two thirds of the capital stock subscribed.

§ 523. When a wagon, turnpike, or plank road is constructed, owned, or operated by any natural person, this title applicable to such person in like manner as it is applicable corporations.

Construction of Toll Roads. See Pol. Code, §§ 2779-2881

TITLE VI.

BRIDGE, FERRY, WHARF, CHUTE, AND PIER CORPORATIONS.

SECTION 528. Corporation to obtain license from supervisors.

529. In what contingencies corporate existence ceases.

530. President and secretary to make annual report, and what to contain. Damages for failing to report.

531. This title to apply to natural persons alike with corporations.

§ 528. No corporation must construct or take tolls on a bridge, ferry, wharf, chute, or pier until authority is granted therefor by the supervisors.

§ 529. Every such corporation ceases to be a body corporate:

1. If, within six months from filing its articles of incorporation, it has not obtained such authority from the board of supervisors; and if, within one year thereafter, it has not commenced the construction of the bridge, wharf, chute, or pier, and actually expended thereon at least ten per cent. of the capital stock of the corporation;

2. If, within three years from filing the articles of incorporation, the bridge, wharf, chute, or pier is not completed;

3. If, when the bridge, wharf, chute, or pier of the corporation is destroyed, it is not reconstructed and ready for use within three years thereafter;

4. If the ferry of any such corporation is not in running order within three months after authority is obtained to establish it, or if at any time thereafter it ceases, for a like term consecutively, to perform the duties imposed by law.

§ 530. The president and secretary of every bridge, ferry, wharf, chute, or pier corporation must annually, under oath, report to the board of supervisors of the county in which the articles of incorporation are filed:

1. The cost of constructing and providing all necessary appendages and appurtenances for their bridge, ferry, wharf, chute, or pier;

2. The amount of all moneys expended thereon, since its construction, for repairs and incidental expenses;

3. The amount of their capital stock, how much paid in, and how much actually expended thereof;

4. The amount received during the year for tolls and from all other sources, stating each separately;

5. The amount of dividends made, and the indebtedness of the corporation, specifying for what it was incurred;

6. Such other facts and particulars respecting the business of the corporation as the board of supervisors may require.

This report the president and secretary must cause to be published for four weeks in a daily newspaper published nearest the bridge, ferry, wharf, pier, or chute, if required by order of the board of supervisors. A failure to make such report subjects the corporation to a penalty of two hundred dollars; and for every week permitted to elapse after such failure, an additional penalty of fifty dollars; payable in each case to the county from which the authority of the corporation was derived. All such cases must be reported by the board of supervisors to the district attorney, who must commence an action therefor.

§ 531. When a bridge, ferry, wharf, chute, or pier is constructed, operated, or owned by a natural person, this title is applicable to such person in like manner as it is applicable to corporations.

General provisions: Public Ferries and Toll Bridges, Polit. Code, §§ 2843-2895; Wharves, Chutes, and Piers, Polit. Code, §§ 2906-2920.

TITLE VII.

TELEGRAPH CORPORATIONS.

SECTION 536. May use right of way along waters, roads, and highways.

537. Persons liable for damages for injuring telegraph property

538. Party guilty of wilful and malicious injury, liable to one hundred times actual damages.

539. Conditions on which damage to sub-aqueous cable may be recovered.

540. May dispose of certain rights.

541. Rates of charges to be fixed, and how published. (Repealed.)

536. Telegraph corporations may construct lines of telegraph along and upon any public road or highway, along or across any of the waters or lands within this State, and may

erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway, or interrupt the navigation of the waters.

§ 537. Any person who injures or destroys, through want of proper care, any necessary or useful fixture of any telegraph corporation, is liable to the corporation for all damages sustained thereby. Any vessel which, by dragging its anchor or otherwise, breaks, injures, or destroys the sub-aqueous cable of a telegraph corporation, subjects its owner to the damages hereinbefore specified.

§ 538. Any person who wilfully and maliciously does any injury to any telegraph property mentioned in the preceding section, is liable to the corporation for one hundred times the amount of actual damages sustained thereby, to be recovered in any court of competent jurisdiction.

§ 539. No telegraph corporation can recover damages for the breaking or injury of any sub-aqueous telegraph cable, unless such corporation has previously erected on either bank of the waters under which the cable is placed, a monument, indicating the place where the cable lies, and publishes for one month, in some newspaper most likely to give notice to navigators, a notice giving a description and the purpose of the monuments, and the general course, landings, and termini of the cable.

§ 540. Any telegraph corporation may at any time, with the consent of the persons holding two thirds of the issued stock of the corporation, sell, lease, assign, transfer, or convey any rights, privileges, franchises, or property of the corporation, except its corporate franchise.

§ 541 of said Code is repealed. [In effect July 1, 1874.]

TITLE VIII.

WATER AND CANAL CORPORATIONS.

SECTION 548. Corporation may obtain contract to supply city or town

549. Duties of corporation. Rates fixed by commissioners.

550. Right to use streets, ways, alleys, and roads.

551. To build and keep bridges in repair.

552. Irrigation. Easement and water rates.

§ 548. No corporation formed to supply any city, city and county, or town with water must do so unless previously authorized by an ordinance of the authorities thereof, or unless it is done in conformity with a contract entered into between the city, city and county, or town and the corporation. Contracts so made are valid and binding in law, but do not take from the city, city and county, or town the right to regulate the rates for water, nor must any exclusive right be granted. No contract or grant must be made for a term exceeding fifty years.

§ 549. All corporations formed to supply water to cities or towns must furnish pure fresh water to the inhabitants thereof, for family uses, so long as the supply permits, at reasonable rates and without distinction of persons, upon proper demand therefor; and must furnish water to the extent of their means, in case of fire or other great necessity, free of charge. The rates to be charged for water must be determined by commissioners, to be selected as follows: two by the city and county or city or town authorities, or, when there are no city or town authorities, by the board of supervisors of the county, and two by the water company; and in case a majority cannot agree to the valuation, the four commissioners must choose a fifth commissioner; if they cannot agree upon a fifth, then the county judge of the county must appoint such ^{and} person. The decision of the majority of the commissioners shall determine the rates to be charged for water for year, and until new rates are established. The board of supervisors, or the proper city or town authorities, may prescribe proper rules relating to the delivery of water, not inconsistent with the laws of the State. [In effect July 1, 1861.]

§ 550. Any corporation created under the provisions of this part, for the purposes named in this title, subject to the reasonable direction of the board of supervisors, or city or town authorities, as to the mode and manner of using such right of way, may use so much of the streets, ways, and alleys in any town, city, or city and county, or any public road therein, as may be necessary for laying pipes for conducting water into any such town, city, or city and county, or through or into any part thereof.

§ 551. Every water or canal corporation must construct and keep in good repair, at all times, for public use, across their canal, flume, or water pipe, all of the bridges that the board of supervisors of the county in which such canal is situated may require, the bridges being on the lines of public highways and necessary for public uses in connection with such highways; and all waterworks must be so laid and constructed as not to obstruct public highways.

See Act of March 30, 1872, Relative to Formation of Canal and Ditch Corporations, Appendix, p. 471.

§ 552. Whenever any corporation, organized under the laws of this State, furnishes water to irrigate lands which said corporation has sold, the right to the flow and use of said water is and shall remain a perpetual easement to the land so sold, at such rates and terms as may be established by said corporation in pursuance of law. And whenever any person who is cultivating land on the line and within the flow of any ditch owned by such corporation, has been furnished water by it, with which to irrigate his land, such person shall be entitled to the continued use of said water, upon the same terms as those who have purchased their land of the corporation. [In effect April 3, 1876.]

56 Cal. 440.

TITLE IX.

HOMESTEAD CORPORATIONS.

SECTION 557. Time of corporate existence.

558. By-laws must specify time for and amount of payment of instalments, and penalty for failure to pay. By-laws to be furnished to any member on demand.

559. Advertisement and sale of delinquent and forfeited shares.

560. May borrow and loan funds — how, and for what time.

- SECTION 561.** Minor children, wards, and married women may own stock.
562. Forfeiture for speculating in or owning lands exceeding two hundred thousand dollars.
563. When corporation is terminated, and how.
564. Payment of premiums.
565. Annual report to be published.
566. Publication in certain cases.

§ 557. Corporations organized for the purpose of acquiring lands in large tracts, paying off incumbrances thereon, improving and subdividing them into homestead lots or parcels, and distributing them among the shareholders, and for the accumulation of a fund for such purposes, are known as homestead corporations, and must not have a corporate existence for a longer period than ten years.

§ 558. Such corporations must specify in their by-laws the times when the instalments of the capital stock are payable, the amount thereof, and the fines, penalties, or forfeitures incurred in case of default. A printed copy of the articles of incorporation and by-laws must be furnished to any shareholder on demand.

§ 559. Whenever any shares of stock are declared forfeited, by resolution of the board of directors, the directors may advertise the same for sale, giving the name of the subscriber and the number of shares, by notice of not less than three weeks, published at least once a week in a newspaper of general circulation in the city, town, or county where the principal place of business of such corporation is located. Such sale must be made at auction, under the direction of the secretary of the company. The corporation may be a bidder, and the shares must be disposed of to the highest bidder for cash. No defect, informality, or irregularity in the proceedings respecting the sale invalidates it, if notice is given as herein provided. After the sale is made the secretary must, on receipt of the purchase money, transfer to the purchaser the shares sold, and after deducting from the proceeds of such sale all instalments then due, and all expenses and charges of sale, must hold the residue subject to the order of the delinquent subscriber.

§ 560. Homestead corporations may borrow money for the purposes of the corporation, not exceeding at any one time one fourth of the aggregate amount of the shares or parts of shares actually paid in, and the income thereof; no greater rate

of interest must be paid therefor than twelve per cent. per annum. For the purpose of completing the purchase of lands intended to be divided and distributed, they may borrow on the security of their shares on the land thus purchased, or that owned by the corporation at the time of procuring the loan, any sum of money which, together with the interest contracted to become due thereon, will not exceed ninety per cent. of the unpaid amount subscribed by the shareholders; but no loan must be made to the corporation for a term extending beyond that of its existence.

§ 561. Such shares of stock in homestead corporations as may be acquired by children, the cost of which, and the deposits and assessments on which are paid from the personal earnings of the children, or with gifts from persons other than their male parents, may be taken and held for them by their parents or guardians. Married women may hold such shares as they acquire with their personal earnings, or those of their children, voluntarily bestowed therefor, or from property bequeathed or given to them by persons other than their husbands.

§ 562. Homestead corporations must not purchase and sell, or otherwise acquire and dispose of real property, or any interest therein, or any personal property, for the sole purpose of speculation or profit. Nor must any such corporation at any one time own or hold, in trust or otherwise, for its purposes, real property, or any interest therein, which in the aggregate exceeds in cash value the sum of two hundred thousand dollars. For any violation of the provisions of this section, corporations forfeit their corporate rights and powers. On the application of any citizen to a court of competent jurisdiction such forfeiture may be adjudged, and the judgment carries with it costs of the proceedings.

§ 563. Except for the purpose of winding up and settling its affairs, every homestead corporation must terminate at the expiration of the time fixed for its existence in the articles of incorporation, or when dissolved as provided in this part. No dividend of funds must be made on termination of its corporate existence, until its debts and liabilities are paid; and upon the final settlement of the affairs of the corporation, or upon the termination of its corporate existence, the directors, in such manner as they may determine, must divide its property among

its shareholders in proportion to their respective interests, or, upon the application of a majority in interest of the stockholders, must sell and dispose of any or all of the real estate of the corporation upon such terms as may be most conducive to the interests of all the stockholders, and must convey the same to the purchaser, and distribute the proceeds among the shareholders, or may at any time, when best for the interests of all the shareholders, cause the lands of the corporation to be subdivided into lots and distributed, by sale for premiums, at auction or otherwise, among the shareholders.

§ 564. Such premiums on lots may be made payable at the time they are bid off, and, if not so paid on any lot of land, the directors may immediately offer the same for sale again. If made payable at a future day, and any shareholder fails to pay his bid on the day the same is made due and payable, the directors may advertise and sell the shares of stock representing the lots of land on which the premiums remain unpaid, in the manner provided in the by-laws for the sale of shares on account of delinquent instalments and premiums.

§ 565. The actual financial condition of all homestead corporations must, by the directors thereof, be published annually in the [a] newspaper published at the principal place of business of the corporation, for four weeks, if published in a weekly, and two weeks, if published in a daily. The statement must be made up to the end of each year, and must be verified by the oath of the president and secretary, showing the items of property and liabilities.

§ 566. In any case in which a publication is required, and no newspaper is published at the principal place of business, the publication may be made in a paper published in an adjoining county.

See Act of March 23, 1874, Relative to Homestead Corporations, Appendix, p. 479.

TITLE X.

SAVINGS AND LOAN CORPORATIONS.

SECTION 571. May loan money — on what terms, how, and to whom, and how long.

572. Capital stock, and rights and privileges thereof.

573. No dividends, except from surplus profits. To contract no liability, except for deposits.

SECTION 574. Property which may be owned by corporations, and how disposed of. Restrictions in purchases as provided above.

575. Married women and minors may own stock in their own right.

576. May issue transferable certificates of deposit. Special certificates.

577. To provide reserve fund for the payment of losses.

578. Prohibition on director and officer, and what vacates office.

579. Definition of phrase "create debts."

§ 571. Corporations organized for the purpose of accumulating and loaning the funds of their members, stockholders, and depositors, may loan and invest the funds thereof, receive deposits of money, loan, invest, and collect the same, with interest, and may repay depositors with or without interest. No such corporation must loan money, except on adequate security on real or personal property, and such loan must not be for a longer period than six years.

57 Cal. 594.

§ 572. When savings and loan corporations have a capital stock specified in their articles of incorporation, certificates of the ownership of shares may be issued; and the rights and privileges to be accorded to, and the obligations to be imposed upon, such capital stock, as distinct from those of depositors, must be fixed and defined, either in the articles of incorporation or in the by-laws.

56 Cal. 345.

§ 573. The directors of savings and loan corporations may, at such times and in such manner as the by-laws prescribe, declare and pay dividends of so much of the profits of the corporation, and of the interest arising from the capital stock and deposits, as may be appropriated for that purpose under the by-laws or under their agreements with depositors. The directors must not contract any debt or liability against the corporation for any purpose whatever, except for deposits. The capital stock and the assets of the corporation are a security to depositors and stockholders, depositors having the priority of security over the stockholders, but the by-laws may provide that the same security shall extend to deposits made by stockholders.

§ 574. Savings and loan corporations may purchase, hold and convey real and personal property, as follows:

1. The lot and building in which the business of the corporation is carried on, the cost of which must not exceed one hundred thousand dollars; except, on a vote of two thirds

of the stockholders, the corporation may increase the sum to an amount not exceeding two hundred and fifty thousand dollars;

2. Such as may have been mortgaged, pledged, or conveyed to it in trust, for its benefit in good faith, for money loaned in pursuance of the regular business of the corporation;

3. Such as may have been purchased at sales under pledges, mortgages, or deeds of trust made for its benefit, for money so loaned, and such as may be conveyed to it by borrowers in satisfaction and discharge of loans made thereon;

4. No such corporation must purchase, hold, or convey real estate in any other case or for any other purpose; and all real estate described in subdivision three of this section must be sold by the corporation within five years after the title thereto is vested in it by purchase or otherwise;

5. No corporation must purchase, own, or sell personal property, except such as may be requisite for its immediate accommodation for the convenient transaction of its business, mortgages on real estate, bonds, securities, or evidences of indebtedness, public or private, gold and silver bullion, and United States mint certificates of ascertained value, and evidences of debt issued by the United States;

6. No corporation must purchase, hold, or convey bonds, securities, or evidences of indebtedness, public or private, except bonds of the United States, of the State of California, and of the counties, cities, or cities and counties, or towns of the State of California, unless such corporation has a capital stock or reserved fund paid in, of not less than three hundred thousand dollars. [Approved March 18, 1874. Immediate effect.]

§ 575. Married women and minors may, in their own right, make and draw deposits and draw dividends, and give valid receipts therefor.

§ 576. Savings and loan corporations may issue general certificates of deposit, which are transferable, as in other cases, by indorsement and delivery; may issue, when requested by the depositor, special certificates, acknowledging deposit by the person therein named of a specified sum of money, and expressly providing on the face of such certificate that the sum so deposited and therein named may be transferred only on the books of the corporation; payment therefor made by the corporation to the depositor named in such

certificate, or to his assignee named upon the books of the corporation, or, in case of death, to the legal representative of such person, of the sum for which such special certificate was issued, discharges the corporation from all further liability on account of the money so paid.

§ 577. Savings and loan corporations may prescribe by their by-laws the time and conditions on which repayment is to be made to depositors; but whenever there is any call by depositors for repayment of a greater amount than the corporation may have disposable for that purpose, the directors or officers thereof must not make any new loans or investments of the funds of the depositors, or of the earnings thereof, until such excess of call has ceased. The directors of any such corporation having no capital stock must retain, on each dividend day, at least five per cent. of the net profits of the corporation, to constitute a reserve fund, which must be invested in the same manner as other funds of the corporation, and must be used toward paying any losses which the corporation may sustain in pursuing its lawful business. The corporation may provide by its by-laws for the disposal of any excess in the reserve fund over one hundred thousand dollars, and the final disposal, upon the dissolution of the corporation, of the reserve fund, or of the remainder thereof, after payment of losses.

57 Cal. 602.

§ 578. No director or officer of any savings and loan corporation must, directly or indirectly, for himself or as the partner or agent of others, borrow any of the deposits or other funds of such corporation, nor must he become an indorser or surety for loans to others, nor in any manner be an obligor for moneys borrowed of or loaned by such corporation. The office of any director or officer who acts in contravention of the provisions of this section immediately thereupon becomes vacant.

Overdrawing of his account by officer, a misdemeanor. Penal Code § 561.

§ 579. Receiving deposits, issuing certificates of deposit, checks, and bills of exchange, and the like, in the transaction of the business of savings and loan corporations, must not be construed to be the creation of debts within the meaning of the phrase "create debts," in section 309.

See Act of February 21, 1872, Relative to Corporations for the Accumulation and Investment of Funds and Savings, Appendix, p. 466.

57 Cal. 602.

TITLE XI.

MINING CORPORATIONS.

Section 584. Removal of the principal office provided for (Repealed.)

585. Directors to file certificates of proceedings in offices of county clerks and secretary of state.

586. Transfer agencies.

587. Stock issued at transfer agencies.

§ 584. Section five hundred and eighty-four of the Civil Code is repealed. [In effect April 3, 1876.]

§ 585. When the publication provided for in the preceding section has been completed, the directors of the corporation must file in the offices of the clerks of the counties from and to which such change has been made, and in the office of the secretary of state, certified copies of the written consent of the stockholders to such change, and of the notice of such change, and proof of publication; also, a certificate that the proposed removal has taken place; and thereafter the principal place of business of the corporation is at the place to which it is removed.

§ 586. Any corporation organized in this State for the purpose of mining or carrying on mining operations in or without this State, may establish and maintain agencies in other States of the United States, for the transfer and issuing of their stock; and a transfer or issue of the same at any such transfer agency, in accordance with the provisions of its by-laws, is valid and binding as fully and effectually for all purposes as if made upon the books of such corporation at its principal office within this State. The agencies must be governed by the by-laws and the directors of the corporation.

§ 587. All stock of any such corporation, issued at a transfer agency, must be signed by the president and secretary of the corporation, and countersigned at the time of its issue by the agent having charge of the transfer agency. No stock must be issued at a transfer agency unless the certificate of stock, in lieu of which the same is issued, is at the time surrendered for cancellation.

See Acts of March 10, 1872, For the Protection of Miners, Appendix, p. 467; March 21, 1872, Relative to Removal of Officers, p. 469; and March 30, 1874, For the Better Protection of Stockholders, p. 483

TITLE XII.

BENEVOLENT CORPORATIONS.

- SECTION 593. Corporations for purposes other than profit, how formed.
 594. Additional facts, articles of incorporation to set out.
 595. Amount of real estate limited.
 596. Land held by Masons, Odd Fellows, and Pioneers.
 597. Directors to make verified report annually.
 598. Sale and mortgage of real estate.
 599. What may be provided for in their by-laws, &c.
 600. Members admitted after incorporation.
 601. No member to transfer membership, &c.
 602. Religious societies may become sole corporations.

§ 593. Any number of persons associated together for any purpose, where pecuniary profit is not their object, and for which individuals may lawfully associate themselves, may, in accordance with the rules, regulations, or discipline of such association, elect directors, the number thereof to be not less than three nor more than eleven, and may incorporate themselves as provided in this part. [In effect April 5, 1880.]

§ 594. In addition to the requirements of section 290, the articles of incorporation of any association mentioned in the preceding section must set forth the holding of the election for directors, the time and place where the same was held, that a majority of the members of such association were present and voted at such election, and the result thereof; which facts must be verified by the officers conducting the election.

52 Cal. 333.

§ 595. All such corporations may hold all the property of the association owned prior to incorporation or acquired thereafter in any manner, and transact all business relative thereto; but no such corporation must own or hold more real estate than may be necessary for the business and objects of the association and providing burial grounds for its deceased members, not to exceed six whole lots in any city or town, nor more than twenty acres in the country, the annual increase, income, or profit whereof must not exceed fifty thousand dollars, *provided*, that any such corporation now, or hereafter having, and having had continuously for the next preceding three years, care, custody, control, and maintenance each year, upon annual average of not less than one hundred orphans, half orphans, and indigent minor children at any one orphan asylum, shall be entitled and allowed to own and possess any number of acres not exceeding one hundred and sixty acres of land in the country, outside of any incorporated city or town, and the annual income or profit of which does not exceed fifty thousand dollars; and *provided further*, such orphan asylum

shall be situated on such lands; *and provided further*, that the limitations herein provided for shall not apply to corporations formed, or to be formed, under section six hundred and two of the Civil Code, when the land is held or used for churches, hospitals, schools, colleges, orphan asylums, parsonages, or cemetery purposes. [In effect February 26, 1881.]

§ 596. In addition to that provided for in the preceding section, friendly societies and Pioneer associations may hold such real estate as may be necessary to carry out their charitable purposes, or for the establishment and endowment of institutions of learning connected therewith. In case any such corporation is the owner, by donation or purchase, of more lands than herein or in the preceding section provided for, such surplus must be sold and conveyed by the corporation within five years after its acquisition. Such sale may be made without the order or decree of the Superior Court, as hereinafter provided. [In effect April 5, 1880.]

§ 597. The directors must annually make a full report of all property, real and personal, held in trust for their corporation by them, and of the condition thereof, to the members of the association for which they are acting.

§ 598. Corporations of the character mentioned in section five hundred and ninety-three may mortgage or sell real property held by them, upon obtaining an order for that purpose from the Superior Court held in the county in which the property is situated. Before making the order, proof must be made to the satisfaction of the court that notice of the application for leave to mortgage or sell has been given by publication in such manner and for such time as the court or judge has directed, and that it is to the interest of the corporation that leave should be granted as prayed for. The application must be made by petition, and any member of the corporation may oppose the granting of the order by affidavit or otherwise. [In effect April 5, 1880.]

§ 599. Corporations organized for purposes other than for profit may in their by-laws, ordinances, constitutions, or articles of incorporation, in addition to the provisions in Title I. of this part, provide for:

1. The qualifications of members, mode of election, and terms of admission to membership;
2. The fees of admission and dues to be paid to their treasury by members;
3. The expulsion and suspension of members for miscon-

duct or non-payment of dues; also, for restoration to membership;

4. Contracting, securing, paying, and limiting the amount of their indebtedness;

5. Other regulations, not repugnant to the Constitution or laws of the State, and consonant with the objects of the corporation.

§ 600. Members admitted after incorporation have all the rights and privileges, and are subject to the same responsibilities, as members of the association prior thereto.

§ 601. No member, or his legal representative, must dispose of or transfer any right or privilege conferred on him by reason of his membership of such corporation, or be deprived thereof, except as herein provided.

See acts of March 28, 1874, Relative to Mutual Beneficial and Relief Associations, Appendix, p. 481; and January 8, 1872, Relative to Incorporation of Colleges by Benevolent and Religious Societies, p. 465.

§ 602. Whenever the rules, regulations, or discipline of any religious denomination, society, or church require, for the administration of the temporalities thereof and the management of the estate and property thereof, it shall be lawful for the bishop, chief priest, or presiding elder of such religious denomination, society, or church to become a sole corporation in the manner prescribed in this title, as nearly as may be, and with all the powers and duties and for the uses and purposes in this title provided for religious incorporations, and subject to all the conditions, limitations, and provisions in said title prescribed. The articles of incorporation to be filed shall set forth the facts authorizing such incorporation, and declare the manner in which any vacancy occurring in the incumbency of such bishop, chief priest, or presiding elder is required by the rules, regulations, or discipline of such denomination, society, or church to be filled, which statements shall be verified by affidavit; and for proof of the appointment or election of such bishop, chief priest, or presiding elder, or of any succeeding incumbent of such corporation, it shall be sufficient to record, with the clerk of the county in which such bishop, chief priest, or presiding elder resides, the original or a copy of his commission or certificate, or letters of election or appointment, duly attested: *provided*, all property held by such bishop, chief priest, or presiding elder shall be in trust for the use, purpose, and behoof of his religious denomination, society, or church. The limitation in section five hundred and ninety-five shall not apply to corporations

formed under this section when the land is held or used for churches, hospitals, schools, colleges, orphan asylums, parsonages, or cemetery purposes. Any judge of the Superior Court in the county in which any incorporation is formed under this chapter shall at all times have access to the books of such incorporation. Any corporation sole heretofore organized and existing under the laws of this State may elect to continue its existence under this act by filing a certificate to that effect under its corporate seal and the hand of its incumbent, or amended articles of incorporation in the form required by the preceding section, as prescribed by section two hundred and eighty-seven (287) of the Civil Code; and from and after the filing of such certificate or amended articles, such corporation shall be entitled to the privileges and subject to the duties, liabilities, and provisions of this act expressed. [In effect April 5, 1880.]
58 Cal. 8.

TITLE XIII.

CEMETERY CORPORATIONS.

- SECTION 608.** How much land may be held, and how disposed of.
609. Who are members eligible to vote and hold office.
610. May hold personal property, to what amount. How disposed of.
611. May issue bonds to pay for grounds. Proceeds of sales, how disposed of.
612. May take and hold property or use income thereof, how.
613. Interments in lot, and effect thereof. Transfer of rights only made, how.
614. Lot owners previous to purchase to be members of the corporation.

§ 608. Corporations organized to establish and maintain cemeteries may take by purchase, donation, or devise, land, not exceeding three hundred and twenty acres in extent, in the county wherein their articles of incorporation are filed, to be held and occupied exclusively as a cemetery for the burial of the dead. The lands must be surveyed and subdivided into lots or plats, avenues, and walks, under order of the directors, and a map thereof filed in the office of the recorder of the county wherein the lands are situated. Thereafter, upon such terms and subject to such conditions and restrictions, to be inserted in the conveyances, as the by-laws or directors may prescribe, the directors may sell and convey the lots or plats to purchasers.

§ 609. Every person of full age who is proprietor of a lot or plat in the cemetery of the corporation, containing not less than two hundred square feet of land, or, if there be more than one proprietor of any such lot, then such of the proprietors as the majority of joint proprietors designate, may, in person or by proxy, cast one vote at all elections had by the corporation for directors or any other purpose, and is eligible to any office of the corporation. At each annual meeting or election, the directors must make a report to the proprietors of all their doings, and of the management and condition of the property and concerns of the corporation.

§ 610. Such corporations may hold personal property to an amount not exceeding five thousand dollars, in addition to the surplus remaining from the sales of lots or plats after the payments required in the succeeding section. Such surplus must be disposed of in the improvement, embellishment, and preservation of the cemetery, and paying incidental expenses of the corporation, and in no other manner.

§ 611. Such corporations may issue their bonds, bearing interest not exceeding twelve per cent. per annum, for the purchase of lands for their cemeteries, payable out of the proceeds of the cemetery, and not otherwise. Sixty per cent. of the proceeds of sales of lots, plats, and graves must be applied at least every three months to the payment of the bonds and interest. Such corporations may also agree with the person or persons from whom cemetery lands shall be purchased, to pay for such lands, as the purchase price thereof, any specified share or portion, not exceeding one half, of the proceeds of all sales of lots or plats made from such lands: such payments to be made at such intervals as may be agreed upon. In all cases where cemetery lands shall be purchased and agreed to be paid for in the manner last provided, the prices for lots or plats specified in the by-laws, rules, or regulations first adopted by such association, or prescribed in the agreement between the cemetery and the person or persons from whom the cemetery lands were purchased, shall not be changed without the written consent of a majority in interest of the persons from whom such lands were purchased, their heirs, representatives, and assigns. [In effect April 16, 1880.]

§ 612. Cemetery corporations may take and hold any property bequeathed or given them on trust, or the lots, plats, graves thereon, for the specific purpose of embellishing or

improving the grounds, avenues, or superstructures of their cemeteries, to use the income thereof, for the erection, preservation, or repair of monuments therein, or for any other purpose or design consistent with the objects of the corporation.

§ 613. Whenever an interment is made in any lot or plat transferred to individual owners by the corporation, the same thereby becomes forever inalienable, and descends in regular line of succession to the heirs at law of the owner. When there are several owners of interests in such lot or plat, one or more may acquire by purchase the interest of others interested in the fee simple title thereof; but no one not an owner acquires interest or right of burial therein by purchase; nor must any one be buried in any such lot or plat, not at the time owning an interest therein, or who is not the relative of such owner or of his wife, except by consent of all jointly interested.

§ 614. When grounds purchased or otherwise acquired for cemetery purposes have been previously used as a burial ground, those who are lot owners at the time of the purchase continue to own the same, and are members of the corporation, with all the privileges a purchase of a lot from the corporation confers.

TITLE XIV.

AGRICULTURAL FAIR CORPORATIONS.

SECTION 620. May acquire and hold real estate, how much.

621. Shall not contract debts or liabilities exceeding amount in treasury.

622. Not for profit. May fix fee, &c., for membership.

§ 620. Agricultural Fair Corporations may purchase, hold, or lease any quantity of land, not exceeding in the aggregate one hundred and sixty acres, with such buildings and improvements as may be erected thereon, and may sell, lease, or otherwise dispose of the same, at pleasure. This real estate must be held for the purpose of erecting buildings and other improvements thereon, to promote and encourage agriculture, horticulture, mechanics, manufactures, stock raising, and general domestic industry.

§ 621. Such corporation must not contract any debts or liabilities in excess of the amount of money in the treasury at the time of contract, except for the purchase of real property, for which they may create a debt not exceeding five thousand dollars, secured by mortgage on the property of the corporation. The directors who vote therefor are personally liable for any debt contracted or incurred in violation of this section.

§ 622. Agricultural Fair Corporations are not conducted for profit, and have no capital stock or income other than that derived from charges to exhibitors and fees for membership, which charges, together with the term of membership and mode of acquiring the same, must be provided for in their by-laws. Such fees must never be greater than to raise sufficient revenue to discharge the debt for the real estate and the improvements thereon, and to defray the current expenses of fairs.

TITLE XV.

GAS CORPORATIONS.

SECTION 623. Corporations to obtain privilege from city or town and use meters proved by the inspector.

629. Gas to be supplied on written application. Damages for refusal.

630. When corporations may refuse to supply gas.

631. Agent of corporation may inspect meters.

632. When persons neglect to pay, gas may be shut off.

§ 628. No corporation hereafter formed must supply any city or town with gas, or lay down mains or pipes for that purpose in the streets or alleys thereof, without permission from the city or town authorities, granted in pursuance of the provisions of the Political Code or of statutes expressly continued by such Code. Nor must such corporation furnish or use any gas-meter which has not been proved and sealed by the inspector or meters.

629. Upon the application in writing of the owner or occupant of any building or premises distant not more than one hundred feet from any main of the corporation, and payment by the applicant of all money due from him, the corporation shall supply gas as required for such building or premises, and not refuse on the ground of any indebtedness of any former

owner or occupant thereof, unless the applicant has undertaken to pay the same. If, for the space of ten days after such application, the corporation refuses or neglects to supply the gas required, it must pay to the applicant the sum of fifty dollars as liquidated damages, and five dollars a day as liquidated damages for every day such refusal or neglect continues thereafter.

§ 630. No corporation is required to lay service pipe where serious obstacles exist to laying it, unless the applicant, if required, deposits in advance, with the corporation, a sum of money sufficient to pay the cost of laying such service pipe, or his proportion thereof.

§ 631. Any agent of a gas corporation exhibiting written authority, signed by the president or secretary thereof for such purpose, may enter any building or premises lighted with gas supplied by such corporation, to inspect the gas-meters therein, to ascertain the quantity of gas supplied or consumed. Every owner or occupant of such buildings who hinders or prevents such entry or inspection must pay to the corporation the sum of fifty dollars as liquidated damages.

§ 632. All gas corporations may shut off the supply of gas from any person who neglects or refuses to pay for the gas supplied, or the rent for any meter, pipes, or fittings provided by the corporation as required by his contract; and for the purpose of shutting off the gas in such case any employee of the corporation may enter the building or premises of such person, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of any day, and remove therefrom any property of the corporation used in supplying gas.

TITLE XVI.

LAND AND BUILDING CORPORATIONS.

SECTION 639. How organized.

640. May borrow money.

641. Powers and object of the corporation.

642. May insure the lives of members and debtors.

643. What real estate may be owned at any one time.

644. What the by-laws may provide.

- 645. Secretary must make annual statement, and publish same.
- 646. Liability of shareholders for debts. (Repealed.)
- 647. Consolidation and transfer of corporation business and property.
- 648. Married women and minors. (Repealed).

§ 639. Corporations organized for the erection of buildings and making other improvements on real property may raise funds in shares not exceeding two hundred dollars each, payable in periodical instalments. Such bodies are known as land and building corporations, and may be organized with or without a capital stock. [In effect July 1, 1874.]

§ 640. Any such corporation may borrow money for the purpose of carrying out its objects, and may give as security therefor its shares or mortgage upon its real estate.

§ 641. Any such corporation may purchase real estate and erect buildings for its members, and make loans to its members for the purpose of aiding them in acquiring and improving real estate. Such loan must in all cases be secured on such real estate.

§ 642. Such corporation may insure, in some life insurance company incorporated under the laws of this State, the lives of its members and debtors. In case of the death of a debtor or member so insured, the amount recovered on the policy must be applied to extinguish the indebtedness, including the premium paid, and the residue, if any, must be paid to the legal representatives of the decedent.

§ 643. Any such corporation may purchase, hold, and convey real estate, as follows :

1. The lot and building in which the business of the corporation is carried on, the cost of which must not exceed twenty thousand dollars ;

2. Such as may from time to time be necessary to supply the wants of its members, the cost of which, held unallotted e members thereof at any one time, must not exceed the of one hundred thousand dollars ;

Such as shall have been mortgaged, pledged, or con-
d to it in trust, to secure money loaned, or to secure the
hase price thereof in pursuance of the regular business of
orporation.

344. The by-laws of such corporations must specify the
int of the periodical subscriptions or payments to be

made by each member, the time and manner in which such payments are to be made; the fines and forfeiture for default; the time and manner of election of directors and other officers, and their terms of office; the manner in which the real estate may be distributed, allotted, or sold to its members; the terms and conditions upon which loans may be made to its members and by them repaid to the corporation; the manner in which a person may become and cease to be a member; the conditions on which members may withdraw from the corporation, and the provisions for the payment to withdrawing members of the sums of money due to them arising from subscriptions or payments, and the proportion of the profits such withdrawing members may receive on withdrawal.

§ 645. The secretary of any such corporation must, once in each year during the existence of the corporation, prepare a full and explicit statement of the financial affairs thereof, comprising a balance sheet, statements of receipts and expenditures, profit and loss, and assets and liabilities, which must be audited and verified by two competent persons (not directors), elected by the general body of shareholders, and be countersigned by the president and secretary. A copy of such statement must be printed and circulated among the members, and appear immediately after the annual meeting of the corporation daily at least one week, or weekly at least four weeks, in one or more newspapers published at the place of the principal business of the corporation.

§ 646 of said Code is repealed. [In effect July 1, 1874.]

§ 647. Any two or more such corporations may unite and become incorporated in one body, with or without any dissolution or division of the funds of such corporation, or either of them; or any such corporation may transfer its engagements, funds, and property to any other such corporation, upon such terms as may be agreed upon by two thirds of the members of each of such bodies present at general meetings of the members, convened for the purpose by notice stating the object of the meeting, sent through the post-office to every member, and by general notice, appearing daily at least one week, or weekly at least two weeks, in some newspaper published at the place of the principal business of the corporation; but no such transfer can prejudice any right of any creditor of either corporation.

§ 648 of said Code is repealed. [In effect July 1, 1874.]

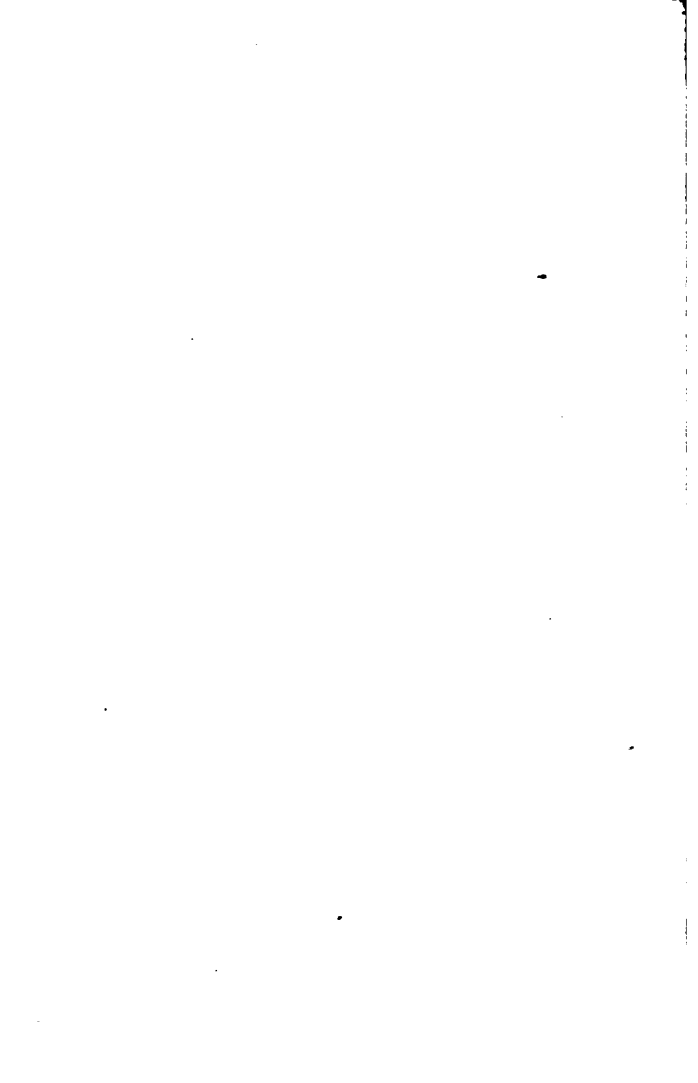
DIVISION SECOND.

PART I. PROPERTY IN GENERAL, §§ 654-749.

II. REAL OR IMMOVABLE PROPERTY, §§ 755-940.

III. PERSONAL OR MOVABLE PROPERTY, §§ 953-994.

IV. ACQUISITION OF PROPERTY, §§ 1000-1422.



PART I.

PROPERTY IN GENERAL.

TITLE I. NATURE OF PROPERTY, §§ 654-663.

II. OWNERSHIP, §§ 669-742.

III. GENERAL DEFINITIONS, §§ 748-749.

TITLE I.

NATURE OF PROPERTY.

SECTION 654. Property, what.

655. In what property may exist.

656. Wild animals.

657. Real and personal.

658. Real property.

659. Land.

660. Fixtures.

661. Fixtures attached to mines.

662. Appurtenances.

663. Personal property.

§ 654. THE ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others. In this Code, the thing of which there may be ownership is called property.

§ 655. There may be ownership of all inanimate things which are capable of appropriation or of manual delivery; of domestic animals; of all obligations; of such products of labor or skill as the composition of an author, the good will of a business, trade-marks and signs, and of rights created or reserved by statute.

Counterfeiting a trade-mark, a misdemeanor. Penal Code, § 350.

656. Animals wild by nature are the subjects of ownership, while living, only when on the land of the person claim-

ing them, or when tamed, or taken and held in the possession, or disabled and immediately pursued.

§ 657. Property is either :

1. Real or immovable ; or,
2. Personal or movable.

§ 658. Real or immovable property consists of :

1. Land ;
2. That which is affixed to land ;
3. That which is incidental or appurtenant to land ;
4. That which is immovable by law.

§ 659. Land is the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance.

§ 660. A thing is deemed to be affixed to land when it is attached to it by roots, as in the case of trees, vines, or shrubs, or imbedded in it, as in the case of walls ; or permanently resting upon it, as in the case of buildings ; or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts, or screws.

51 Cal. 596 ; 52 Cal. 395 ; 56 Cal. 85 ; 57 Cal. 8 ; 58 Cal. 126.

§ 661. Sluice-boxes, flumes, hose, pipes, railway tracks, cars, blacksmith shops, mills, and all other machinery or tools used in working or developing a mine, are to be deemed affixed to the mine.

§ 662. A thing is deemed to be incidental or appurtenant to land when it is by right used with the land for its benefit ; as in the case of a way, or watercourse, or of a passage for light, air, or heat from or across the land of another.

52 Cal. 395 ; 56 Cal. 13.

§ 663. Every kind of property that is not real is personal

TITLE II.

OWNERSHIP.

CHAPTER I. OWNERS, §§ 669-672.

II. MODIFICATIONS OF OWNERSHIP, §§ 678-726.

III. RIGHTS OF OWNERS, §§ 732-733.

IV. TERMINATION OF OWNERSHIP, §§ 739-742.

CHAPTER I.

OWNERS.

SECTION 669. Owner.

670. Property of the state.

671. Who may own property.

672. Aliens inheriting must claim within five years.

§ 669. All property has an owner, whether that owner is the State, and the property public, or the owner an individual, and the property private. The State may also hold property as a private proprietor.

§ 670. The State is the owner of all land below tide-water, and below ordinary high-water mark, bordering upon tide-water within the State; of all land below the water of a navigable lake or stream; of all property lawfully appropriated by it to its own use; of all property dedicated to the State, and all property of which there is no other owner. [In effect July 1, 1874.]

Property of the State. Pol. Code, §§ 40-44.

§ 671. Any person, whether citizen or alien, may take, hold, and dispose of property, real or personal, within this State. [In effect July 1, 1874.]

672. If a non-resident alien takes by succession, he must accept and claim the property within five years from the time of succession, or be barred. The property in such case is disposed of as provided in Title VIII, Part III., Code of Civil Procedure. [§§ 1269-1272.]

CHAPTER II.

MODIFICATIONS OF OWNERSHIP.

- ARTICLE** I. INTERESTS IN PROPERTY, §§ 678-708.
 II. CONDITIONS OF OWNERSHIP, §§ 707-711.
 III. RESTRAINTS UPON ALIENATION, §§ 715-718.
 IV. ACCUMULATIONS, §§ 722-726.

ARTICLE I.

INTERESTS IN PROPERTY.

- SECTION** 678. Ownership, absolute or qualified.
 679. When absolute.
 680. When qualified.
 681. Several ownership, what.
 682. Ownership of several persons.
 683. Joint interest, what.
 684. Partnership interest, what.
 685. Interest in common, what.
 686. What interests are in common.
 687. Community property.
 688. Interests as to time.
 689. Present interest, what.
 690. Future interest, what.
 691. Perpetual interest, what.
 692. Limited interest, what.
 693. Kinds of future interests.
 694. Vested interests.
 695. Contingent interests.
 696. Two or more future interests.
 697. Certain future interests not to be void.
 698. Posthumous children.
 699. Qualities of expectant estates.
 700. Same.
 701. Interests in real property.
 702. Same.
 703. What future interests are recognized.

- § 678.** The ownership of property is either :
 1. Absolute ; or,
 2. Qualified.

§ 679. The ownership of property is absolute when a single person has the absolute dominion over it, and may use it or dispose of it according to his pleasure, subject only to general laws.

§ 680. The ownership of property is qualified :

1. When it is shared with one or more persons ;
2. When the time of enjoyment is deferred or limited ;
3. When the use is restricted.

§ 681. The ownership of property by a single person is designated as a sole or several ownership.

§ 682. The ownership of property by several persons is either :

1. Of joint interests ;
2. Of partnership interests ;
3. Of interests in common ;
4. Of community interest of husband and wife.

§ 683. A joint interest is one owned by several persons in equal shares, by a title created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy, or when granted or devised to executors or trustees as joint tenants.

§ 684. A partnership interest is one owned by several persons in partnership, for partnership purposes.

§ 685. An interest in common is one owned by several persons, not in joint ownership or partnership.

56 Cal. 209 ; 57 Cal. 180 ; 58 Cal. 21.

§ 686. Every interest created in favor of several persons in their own right is an interest in common, unless acquired by them in partnership, for partnership purposes, or unless declared in its creation to be a joint interest, as provided in section 683, or unless acquired as community property.

§ 687. Community property is property acquired by husband and wife, or either, during marriage, when not acquired as the separate property of either.

§ 688. In respect to the time of enjoyment, an interest in property is either :

1. Present or future ; and,
2. Perpetual or limited.

§ 689. A present interest entitles the owner to the immediate possession of the property.

§ 690. A future interest entitles the owner to the possession of the property only at a future period.

§ 691. A perpetual interest has a duration equal to that of the property.

§ 692. A limited interest has a duration less than that of the property.

§ 693. A future interest is either :

1. Vested ; or,
2. Contingent.

§ 694. A future interest is vested when there is a person in being who would have a right, defeasible or indefeasible, to the immediate possession of the property, upon the ceasing of the intermediate or precedent interest.

§ 695. A future interest is contingent, whilst the person in whom, or the event upon which, it is limited to take effect remains uncertain.

§ 696. Two or more future interests may be created to take effect in the alternative, so that if the first in order fails to vest, the next in succession shall be substituted for it, and take effect accordingly.

§ 697. A future interest is not void merely because of the improbability of the contingency on which it is limited to take effect.

§ 698. When a future interest is limited to successors, heirs, issue, or children, posthumous children are entitled to take in the same manner as if living at the death of their parent.

§ 699. Future interests pass by succession, will, and transfer, in the same manner as present interests.

§ 700. A mere possibility, such as the expectancy of an heir apparent, is not to be deemed an interest of any kind.

§ 701. In respect to real or immovable property, the interests mentioned in this chapter are denominated estates,

and are specially named and classified in Part II. of this division.

§ 702. The names and classification of interests in real property have only such application to interests in personal property as is in this division of the Code expressly provided.

§ 703. No future interest in property is recognized by the law, except such as is defined in this division of the Code.

ARTICLE II.

CONDITIONS OF OWNERSHIP.

SECTION 707. Fixing the time of enjoyment.

708. Conditions.

709. Certain conditions precedent void.

710. Conditions restraining marriage void.

711. Conditions restraining alienation void.

§ 707. The time when the enjoyment of property is to begin or end may be determined by computation, or be made to depend on events. In the latter case, the enjoyment is said to be upon condition.

§ 708. Conditions are precedent or subsequent. The former fix the beginning, the latter the ending, of the right.

§ 709. If a condition precedent requires the performance of an act wrong of itself, the instrument containing it is so far void, and the right cannot exist. If it requires the performance of an act not wrong of itself, but otherwise unlawful, the instrument takes effect and the condition is void.

§ 710. Conditions imposing restraints upon marriage, except upon the marriage of a minor, are void; but this does not affect limitations where the intent was not to forbid marriage, but only to give the use until marriage. [In effect July 1, 1874.]

§ 711. Conditions restraining alienation, when repugnant to the interest created, are void.

ARTICLE III.

RESTRAINTS UPON ALIENATION.

SECTION 715. How long it may be suspended.

716. Future interests void, which suspend power of alienation.

717. Leases of agricultural land, for over ten years, void.

718. Leases of city lots, for over twenty years, void.

§ 715. The absolute power of alienation cannot be suspended, by any limitation or condition whatever, for a longer period than during the continuance of the lives of persons in being at the creation of the limitation or condition, except in the single case mentioned in section 772.

58 Cal. 473, 482.

§ 716. Every future interest is void in its creation which, by any possibility, may suspend the absolute power of alienation for a longer period than is prescribed in this chapter. Such power of alienation is suspended when there are no persons in being by whom an absolute interest in possession can be conveyed.

§ 717. No lease or grant of agricultural land for a longer period than ten years, in which shall be reserved any rent or service of any kind, shall be valid.

§ 718. No lease or grant of any town or city lot, for a longer period than twenty years, in which shall be reserved any rent or service of any kind, shall be valid.

ARTICLE IV.

ACCUMULATIONS.

SECTION 722. Dispositions of income.

723. Accumulations, when void.

724. Accumulation of income.

725. Other directions, when void in part.

726. Application of income to support, &c., of minor

§ 722. Dispositions of the income of property to accrue and to be received at any time subsequent to the execution of the instrument creating such disposition, are governed by the rules prescribed in this title in relation to future interests.

§ 723. All directions for the accumulation of the income

of property, except such as are allowed by this title, are void.

§ 724. An accumulation of the income of property, for the benefit of one or more persons, may be directed by any will or transfer in writing sufficient to pass the property out of which the fund is to arise, as follows:

1. If such accumulation is directed to commence on the creation of the interest out of which the income is to arise, it must be made for the benefit of one or more minors then in being, and terminate at the expiration of their minority; or,

2. If such accumulation is directed to commence at any time subsequent to the creation of the interest out of which the income is to arise, it must commence within the time in this title permitted for the vesting of future interests, and during the minority of the beneficiaries, and terminate at the expiration of such minority.

58 Cal. 480.

§ 725. If in either of the cases mentioned in the last section the direction for an accumulation is for a longer term than during the minority of the beneficiaries, the direction only, whether separable or not from other provisions of the instrument, is void as respects the time beyond such minority.

§ 726. When a minor for whose benefit an accumulation has been directed is destitute of other sufficient means of support and education, the proper court, upon application, may direct a suitable sum to be applied thereto out of the fund.

CHAPTER III.

RIGHTS OF OWNERS.

SECTION 732. Increase of property.

733. In certain cases who entitled to income of property.

732. The owner of a thing also owns all its products and accessions.

733. When, in consequence of a valid limitation of a re interest, there is a suspension of the power of alienation the ownership during the continuation of which the in-

come is undisposed of, and no valid direction for its accumulation is given, such income belongs to the persons presumptively entitled to the next eventual interest.

CHAPTER IV.

TERMINATION OF OWNERSHIP.

SECTION 739. Future interests, when defeated.

740. Same.

741. Future interests, when not defeated.

742. Same.

§ 739. A future interest, depending on the contingency of the death of any person without successors, heirs, issue, or children, is defeated by the birth of a posthumous child of such person, capable of taking by succession.

§ 740. A future interest may be defeated in any manner or by any act or means which the party creating such interest provided for or authorized in the creation thereof; nor is a future interest, thus liable to be defeated, to be on that ground adjudged void in its creation.

§ 741. No future interest can be defeated or barred by any alienation or other act of the owner of the intermediate or precedent interest, nor by any destruction of such precedent interest by forfeiture, surrender, merger, or otherwise, except as provided by the next section, or where a forfeiture is imposed by statute as a penalty for the violation thereof.

§ 742. No future interest, valid in its creation, is defeated by the determination of the precedent interest before the happening of the contingency on which the future interest is limited to take effect; but should such contingency afterwards happen, the future interest takes effect in the same manner, and to the same extent, as if the precedent interest had continued to the same period.

TITLE III.

GENERAL DEFINITIONS.

SECTION 748. Income, what.

749. Time of creation, what.

§ 748. The income of property, as the term is used in this part of the Code, includes the rents and profits of real property, the interest of money, dividends upon stock, and other produce of personal property.

§ 749. The delivery of the grant, where a limitation, condition, or future interest is created by grant, and the death of the testator, where it is created by will, is to be deemed the time of the creation of the limitation, condition, or interest, within the meaning of this part of the Code.

PART II.

REAL OR IMMOVABLE PROPERTY.

TITLE I. GENERAL PROVISIONS, § 755.

II. ESTATES IN REAL PROPERTY, §§ 761-811.

III. RIGHTS AND OBLIGATIONS OF OWNERS, §§ 812-841.

IV. USES AND TRUSTS, §§ 847-871.

V. POWERS, §§ 878-940. (Repealed.)

TITLE I.

GENERAL PROVISIONS.

SECTION 755. Real property, how governed.

§ 755. REAL property within this State is governed by the law of this State, except where the title is in the United States. [In effect July 1, 1874.]

TITLE II.

ESTATES IN REAL PROPERTY.

CHAPTER I. ESTATES IN GENERAL, §§ 761-781.

II. TERMINATION OF ESTATES, §§ 789-793.

III. SERVITUDES, §§ 801-811.

CHAPTER I.

ESTATES IN GENERAL.

SECTION 761. Enumeration of estates.

762. What estate a fee simple.

763. Conditional fees and estates tail abolished.

764. Certain remainders valid.

- SECTION 765.** Freeholds. Chattels real. Chattel interests.
766. Estates for life of a third person, when a freehold, &c.
767. Future estates, what.
768. Reversions.
769. Remainders.
770. Limitations of chattels real.
771. Suspension by trust.
772. Contingent remainder in fee
773. Remainders, future and contingent estates, how created.
774. Limitation of successive estates for life.
775. Remainder upon estates for life of third person.
776. Contingent remainder on a term of years.
777. Remainder of estates for life.
778. Remainder upon a contingency.
779. Heirs of a tenant for life, when to take as purchasers.
780. Construction of certain remainders.
781. Effect of power of appointment.

§ 761. Estates in real property, in respect to the duration of their enjoyment, are either :

1. Estates of inheritance or perpetual estates ;
2. Estates for life ;
3. Estates for years ; or,
4. Estates at will.

§ 762. Every estate of inheritance is a fee, and every such estate, when not defeasible or conditional, is a fee simple, or an absolute fee. [In effect July 1, 1874.]

§ 763. Estates tail are abolished, and every estate which would be at common law adjudged to be a fee tail is a fee simple ; and if no valid remainder is limited thereon, is a fee simple absolute.

§ 764. Where a remainder in fee is limited upon any estate, which would by the common law be adjudged a fee tail, such remainder is valid as a contingent limitation upon a fee, and vests in possession on the death of the first taker, without issue living at the time of his death.

765. Estates of inheritance and for life are called estates freehold ; estates for years are chattels real ; and estates at lease are chattel interests, but are not liable as such to sale on foreclosure.

766. An estate, during the life of a third person, whether limited to heirs or otherwise, is a freehold. [In effect July 1, 1874.]

§ 767. A future estate may be limited by the act of the party to commence in possession at a future day, either without the intervention of a precedent estate, or on the termination, by lapse of time or otherwise, of a precedent estate created at the same time.

49 Cal. 374.

§ 768. A reversion is the residue of an estate left by operation of law in the grantor or his successors, or in the successors of a testator, commencing in possession on the determination of a particular estate granted or devised.

§ 769. When a future estate, other than a reversion, is dependent on a precedent estate, it may be called a remainder, and may be created and transferred by that name.

§ 770. The absolute ownership of a term of years cannot be suspended for a longer period than the absolute power of alienation can be suspended in respect to a fee. [In effect July 1, 1874.]

§ 771. The suspension of all power to alienate the subject of a trust, other than a power to exchange it for other property to be held upon the same trust, or to sell it and reinvest the proceeds to be held upon the same trust, is a suspension of the power of alienation, within the meaning of section. 715.

58 Cal. 481.

§ 772. A contingent remainder in fee may be created on a prior remainder in fee, to take effect in the event that the persons to whom the first remainder is limited die under the age of twenty-one years, or upon any other contingency by which the estate of such persons may be determined before they attain majority.

58 Cal. 474.

§ 773. Subject to the rules of this title, and of Part I. of this division, a freehold estate, as well as a chattel real, may be created to commence at a future day; an estate for life may be created in a term of years, and a remainder limited thereon; a remainder of a freehold or chattel real, either contingent or vested, may be created, expectant on the determination of a term of years; and a fee may be limited on a fee, upon a contingency, which, if it should occur, must happen within the period prescribed in this title.

§ 774. Successive estates for life cannot be limited, except to persons in being at the creation thereof, and all life estates subsequent to those of persons in being are void; and upon the death of those persons the remainder, if valid in its creation, takes effect in the same manner as if no other life estate had been created. [In effect July 1, 1874.]

§ 775. No remainder can be created upon successive estates for life, provided for in the preceding section, unless such remainder is in fee; nor can a remainder be created upon such estate in a term for years, unless it is for the whole residue of such term. [In effect July 1, 1874.]

§ 776. A contingent remainder cannot be created on a term of years, unless the nature of the contingency on which it is limited is such that the remainder must vest in interest during the continuance or at the termination of lives in being at the creation of such remainder.

§ 777. No estate for life can be limited as a remainder on a term of years, except to a person in being at the creation of such estate.

§ 778. A remainder may be limited on a contingency which, in case it should happen, will operate to abridge or determine the precedent estate; and every such remainder is to be deemed a conditional limitation.

§ 779. When a remainder is limited to the heirs, or heirs of the body, of a person to whom a life estate in the same property is given, the persons who, on the termination of the life estate, are the successors or heirs of the body of the owner for life, are entitled to take by virtue of the remainder so limited to them, and not as mere successors of the owner for life.

* 780. When a remainder on an estate for life or for years is limited on a contingency defeating or avoiding such precedent estate, it is to be deemed intended to take effect only on death of the first taker, or the expiration, by lapse of time, of such term of years.

781. A general or special power of appointment does not prevent the vesting of a future estate limited to take effect in such power is not executed.

CHAPTER II.**TERMINATION OF ESTATES.**

- SECTION 789.** Tenancy at will may be terminated by notice.
790. Effect of notice
791. Reëntry, when and how to be made
792. Summary proceedings in certain cases provided for.
793. Notice not necessary before action.

§ 789. A tenancy or other estate at will, however created, may be terminated by the landlord's giving notice in writing to the tenant, in the manner prescribed by section 1162 of the Code of Civil Procedure, to remove from the premises within a period of not less than one month, to be specified in the notice.

56 Cal. 128.

§ 790. After such notice has been served, and the period specified by such notice has expired, but not before, the landlord may reënter, or proceed according to law to recover possession.

56 Cal. 128.

§ 791. Whenever the right of reëntry is given to a grantor or lessor in any grant or lease, or otherwise, such reëntry may be made at any time after the right has accrued, upon three days notice, as provided in sections 1161 and 1162, Code of Civil Procedure.

56 Cal. 128.

§ 792. Summary proceedings for obtaining possession of real property forcibly entered, or forcibly and unlawfully detained, are provided for in sections 1159 to 1175, both inclusive, of the Code of Civil Procedure.

- **§ 793.** An action for the possession of real property leased or granted, with a right of reëntry, may be maintained at any time, in the district court, after the right to reënter has accrued, without the notice prescribed in section 791.

CHAPTER III.

SERVITUDES.

- SECTION 801.** Servitudes attached to land.
 802. Servitudes not attached to land.
 803. Designation of estates.
 804. By whom grantable.
 805. By whom held.
 806. Extent of servitudes.
 807. Apportioning easements.
 808. Rights of owner of future estate.
 809. Actions by owner and occupant of dominant tenement.
 810. Actions by owner of servient tenement.
 811. How extinguished.

§ 801. The following land burdens, or servitudes upon land, may be attached to other land as incidents or appurtenances, and are then called easements :

1. The right of pasture ;
 2. The right of fishing ;
 3. The right of taking game ;
 4. The right of way ;
 5. The right of taking water, wood, minerals, and other things ;
 6. The right of transacting business upon land ;
 7. The right of conducting lawful sports upon land ;
 8. The right of receiving air, light, or heat from or over, or discharging the same upon or over land ;
 9. The right of receiving water from or discharging the same upon land ;
 10. The right of flooding land ;
 11. The right of having water flow without diminution or disturbance of any kind ;
 12. The right of using a wall as a party wall ;
 13. The right of receiving more than natural support from adjacent land or things affixed thereto ;
 14. The right of having the whole of a division fence maintained by a coterminous owner ;
 5. The right of having public conveyances stopped, or of pping the same on land ;
 - i. The right of a seat in church ;
 - ' The right of burial.
- Cal. 13 ; 53 Cal. 159, 192.

302. The following land burdens, or servitudes upon , may be granted and held, though not attached to land .

1. The right to pasture, and of fishing and taking game ;
2. The right of a seat in church ;
3. The right of burial ;
4. The right of taking rents and tolls ;
5. The right of way ;
6. The right of taking water, wood, minerals, or other things. [In effect July 1, 1874.]

§ 803. The land to which an easement is attached is called the dominant tenement; the land upon which a burden or servitude is laid is called the servient tenement.

§ 804. A servitude can be created only by one who has a vested estate in the servient tenement.

§ 805. A servitude thereon cannot be held by the owner of the servient tenement.

§ 806. The extent of a servitude is determined by the terms of the grant, or the nature of the enjoyment by which it was acquired.

§ 807. In case of partition of the dominant tenement, the burden must be apportioned according to the division of the dominant tenement, but not in such a way as to increase the burden upon the servient tenement.

§ 808. The owner of a future estate in a dominant tenement may use easements attached thereto for the purpose of viewing waste, demanding rent, or removing an obstruction to the enjoyment of such easements, although such tenement is occupied by a tenant.

§ 809. The owner of any estate in a dominant tenement, or the occupant of such tenement, may maintain an action for the enforcement of an easement attached thereto.

§ 810. The owner in fee of a servient tenement may maintain an action for the possession of the land, against any one unlawfully possessed thereof, though a servitude exists thereon in favor of the public.

§ 811. A servitude is extinguished :

1. By the vesting of the right to the servitude and the right to the servient tenement in the same person ;

2. By the destruction of the servient tenement ;
3. By the performance of any act upon either tenement, by the owner of the servitude, or with his assent, which is incompatible with its nature or exercise ; or,
4. When the servitude was acquired by enjoyment, by disuse thereof by the owner of the servitude for the period prescribed for acquiring title by enjoyment.

TITLE III.

RIGHTS AND OBLIGATIONS OF OWNERS.

CHAPTER I. RIGHTS OF OWNERS, §§ 818-834.

II. OBLIGATIONS OF OWNERS, §§ 840-841.

CHAPTER I.

RIGHTS OF OWNERS.

ARTICLE I. INCIDENTS OF OWNERSHIP, §§ 818-827.

II. BOUNDARIES, §§ 829-834.

ARTICLE I.

INCIDENTS OF OWNERSHIP.

- SECTION** 818. Rights of tenant for life.
 819. Rights of tenant for years, &c.
 820. Same.
 821. Rights of grantees of rents and reversion.
 822. Liability of assigns of lessee.
 823. Rights of lessees and their assignees, &c.
 824. Remedy on leases for life.
 825. Rent dependent on life.
 826. Remedy of reversioners, &c.
 827. Terms of lease may be changed by notice.

818. The owner of a life estate may use the land in the same manner as the owner of a fee simple, except that he must do no act to the injury of the inheritance.

819. A tenant for years or at will, unless he is a wrong-

doer by holding over, may occupy the buildings, take the annual products of the soil, work mines and quarries open at the commencement of his tenancy.

§ 820. A tenant for years or at will has no other rights to the property than such as are given to him by the agreement or instrument by which his tenancy is acquired, or by the last section.

§ 821. A person to whom any real property is transferred or devised, upon which rent has been reserved, or to whom any such rent is transferred, is entitled to the same remedies for recovery of rent, for non-performance of any of the terms of the lease, or for any waste or cause of forfeiture, as his grantor or devisor might have had.

§ 822. Whatever remedies the lessor of any real property [has] against his immediate lessee for the breach of any agreement in the lease, or for recovery of the possession, he has against the assignees of the lessee, for any cause of action accruing while they are such assignees, except where the assignment is made by way of security for a loan, and is not accompanied by possession of the premises. [In effect July 1, 1874.]

§ 823. Whatever remedies the lessee of any real property may have against his immediate lessor, for the breach of any agreement in the lease, he may have against the assigns of the lessor, and the assigns of the lessee may have against the lessor and his assigns, except upon covenants against incumbrances or relating to the title or possession of the premises.

§ 824. Rent due upon a lease for life may be recovered in the same manner as upon a lease for years.

§ 825. Rent dependent on the life of a person may be recovered after as well as before his death.

§ 826. A person having an estate in fee, in remainder, or reversion, may maintain an action for any injury done to the inheritance, notwithstanding an intervening estate for life or years, and although, after its commission, his estate is transferred, and he has no interest in the property at the commencement of the action.

§ 827. In all leases of lands or tenements, or of any interest therein, from month to month, the landlord may, upon giving notice in writing at least fifteen days before the expiration of the month, change the terms of the lease, to take effect at the expiration of the month. The notice, when served upon the tenant, shall of itself operate and be effectual to create and establish, as a part of the lease, the terms, rent, and conditions specified in the notice, if the tenant shall continue to hold the premises after the expiration of the month. [In effect July 1, 1874.]

ARTICLE II.

BOUNDARIES.

SECTION 829. Rights of owner.

830. Boundaries by water.

831. Boundaries by ways.

832. Lateral and subjacent support.

833. Trees whose trunks are wholly on land of one.

834. Line trees.

§ 829. The owner of land in fee has the right to the surface and to everything permanently situated beneath or above it.

§ 830. Except where the grant under which the land is held indicates a different intent, the owner of the upland, when it borders on tide-water, takes to ordinary high-water mark ; when it borders upon a navigable lake or stream, where there is no tide, the owner takes to the edge of the lake or stream, at low-water mark ; when it borders upon any other water, the owner takes to the middle of the lake or stream. [In effect July 1, 1874.]

§ 831. An owner of land bounded by a road or street is presumed to own to the centre of the way, but the contrary may be shown.

832. Each coterminous owner is entitled to the lateral subjacent support which his land receives from the adjoining land, subject to the right of the owner of the adjoining land to make proper and usual excavations on the same for purposes of construction, on using ordinary care and skill, taking reasonable precautions to sustain the land of the owner, and giving previous reasonable notice to the other of

his intention to make such excavations. [In effect July 1, 1874.]

§ 833. Trees whose trunks stand wholly upon the land of one owner belong exclusively to him, although their roots grow into the land of another.

§ 834. Trees whose trunks stand partly on the land of two or more coterminous owners belong to them in common.

CHAPTER II.

OBLIGATIONS OF OWNERS.

SECTION 840. Duties of tenant for life

841. Monuments and fences.

§ 840. The owner of a life estate must keep the buildings and fences in repair from ordinary waste, and must pay the taxes and other annual charges, and a just proportion of extraordinary assessments benefiting the whole inheritance.

§ 841. Coterminous owners are mutually bound equally to maintain :

1. The boundaries and monuments between them ;
2. The fences between them, unless one of them chooses to let his land lie without fencing ; in which case, if he afterwards incloses it, he must refund to the other a just proportion of the value, at that time, of any division fence made by the latter.

51 Cal. 297 ; 56 Cal. 624.

TITLE IV.

USES AND TRUSTS.

SECTION 847. What uses and trusts may exist.

848. Right to possession of land creates legal ownership. (Repealed.)

849. Certain trusts unaffected. (Repealed.)

850. Trustees of estate for use of another take no interest. (Repealed.)

851. Preceding sections qualified. (Repealed.)

SECTION 852. Trust must be in writing

- 853. Transfer to one for money paid by another.
- 854. Rights of creditors. (Repealed.)
- 855. Section 853 qualified. (Repealed.)
- 856. Purchasers protected.
- 857. For what purposes express trusts may be created.
- 858. Certain devises in trust to be deemed powers.
- 859. Profits of land liable to creditors in certain cases.
- 860. Powers, execution of.
- 861. Creation of certain powers not prohibited. (Repealed.)
- 862. And land, &c., to descend to persons entitled. (Repealed.)
- 863. Trustees of express trusts to have whole estate.
- 864. Author of trust may devise, &c.
- 865. Title of grantor of trust property.
- 866. Interests remaining in grantor of express trust.
- 867. Powers over trust of party interested.
- 868. Same.
- 869. Effect of omitting trust in conveyance.
- 870. Certain sales, &c., by trustees, void.
- 871. When estate of trustee to cease.

§ 847. Uses and trusts in relation to real property are those only which are specified in this title.

53 Cal. 848.

§§ 848, 849, 850, 851 of said Code are repealed. [In effect July 1, 1874.]

§ 852. No trust in relation to real property is valid unless created or declared :

1. By a written instrument, subscribed by the trustee, or by his agent thereto authorized by writing ;
2. By the instrument under which the trustee claims the estate affected ; or,
3. By operation of law.

§ 853. When a transfer of real property is made to one person, and the consideration thereof is paid by or for another, a trust is presumed to result in favor of the person by or for whom such payment is made. [In effect July 1, 1874.]

§§ 854, 855 of said Code are repealed. [In effect July 1874.]

856. No implied or resulting trust can prejudice the rights of a purchaser or encumbrancer of real property for value and without notice of the trust.

857. Express trusts may be created for any of the following purposes :

1. To sell real property, and apply or dispose of the proceeds in accordance with the instrument creating the trust ;

2. To mortgage or lease real property for the benefit of annuitants or other legatees, or for the purpose of satisfying any charge thereon ;

3. To receive the rents and profits of real property, and pay them to or apply them to the use of any person, whether ascertained at the time of the creation of the trust or not, for himself or for his family, during the life of such person, or for any shorter term, subject to the rules of Title II. of this part ; or,

4. To receive the rents and profits of real property, and to accumulate the same for the purposes and within the limits prescribed by the same title. [In effect July 1, 1874.]

58 Cal. 478, 481.

§ 858. Where a power to sell real property is given to a mortgagee, or other encumbrancer, in an instrument intended to secure the payment of money, the power is to be deemed a part of the security, and vests in any person who, by assignment, becomes entitled to the money so secured to be paid, and may be executed by him whenever the assignment is duly acknowledged and recorded. [In effect July 1, 1874.]

§ 859. Where a trust is created to receive the rents and profits of real property, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum that may be necessary for the education and support of the person for whose benefit the trust is created, is liable to the claims of the creditors of such person, in the same manner as personal property which cannot be reached by execution.

§ 860. Where a power is vested in several persons, all must unite in its execution ; but in case any one or more of them is dead, the power may be executed by the survivor or survivors, unless otherwise prescribed by the terms of the power. [In effect July 1, 1874.]

§§ 861, 862 of said Code are repealed. [In effect July 1, 1874.]

§ 863. Except as hereinafter otherwise provided, every express trust in real property, valid as such in its creation, vests the whole estate in the trustees, subject only to the exe

cution of the trust. The beneficiaries take no estate or interest in the property, but may enforce the performance of the trust.

§ 864. Notwithstanding anything contained in the last section, the author of a trust may, in its creation, prescribe to whom the real property to which the trust relates shall belong, in the event of the failure or termination of the trust, and may transfer or devise such property, subject to the execution of the trust.

§ 865. The grantee or devisee of real property subject to a trust acquires a legal estate in the property, as against all persons except the trustees and those lawfully claiming under them.

§ 866. Where an express trust is created in relation to real property, every estate not embraced in the trust, and not otherwise disposed of, is left in the author of the trust or his successors.

§ 867. The beneficiary of a trust for the receipt of the rents and profits of real property, or for the payment of an annuity out of such rents and profits, may be restrained from disposing of his interest in such trust, during his life or for a term of years, by the instrument creating the trust. [In effect July 1, 1874.]

§ 868 of this Code is repealed. [In effect July 1, 1874.]

§ 869. Where an express trust is created in relation to real property, but is not contained or declared in the grant to the trustee, or in an instrument signed by him, and recorded in the same office with the grant to the trustee, such grant must be deemed absolute in favor of purchasers from such trustee without notice, and for a valuable consideration. [In effect July 1, 1874.]

870. Where a trust in relation to real property is expressed in the instrument creating the estate, every transfer or act of the trustees, in contravention of the trust, is absolutely void.

871. When the purpose for which an express trust was created ceases, the estate of the trustee also ceases.

TITLE V.**POWERS.**

Title V., of Part II., of Division II., on Powers, of the Civil Code, embracing sections of said Code from sec. 878 to 946, inclusive, is repealed. [Approved April 30. In effect July 1, 1874.]

PART III.

PERSONAL OR MOVABLE PROPERTY.

TITLE I. PERSONAL PROPERTY IN GENERAL, §§ 946-947.

**II. PARTICULAR KINDS OF PERSONAL PROPERTY
§§ 953-994.**

TITLE I.

PERSONAL PROPERTY IN GENERAL.

SECTION 946. By what law governed.

947. Future interests in perishable property, how protected.
(Repealed.)

§ 946. If there is no law to the contrary in the place where personal property is situated, it is deemed to follow the person of its owner, and is governed by the law of his domicile.

§ 946 having been repealed by clerical error in 1874, was reenacted at session of 1875-6.

§ 947 of said Code is repealed. [In effect July 1, 1874.]

TITLE II.

ARTICULAR KINDS OF PERSONAL PROPERTY.

AFTER I. THINGS IN ACTION, §§ 953-954.

II. SHIPPING, §§ 960-973.

III. PRODUCTS OF THE MIND, §§ 980-985.

IV. OTHER KINDS OF PERSONAL PROPERTY, §§ 991-994.

CHAPTER I. THINGS IN ACTION.

SECTION 953. Things in action defined.

954. Transfer and survivorship.

§ 953. A thing in action is a right to recover money or other personal property by a judicial proceeding. [In effect July 1, 1874.]

§ 954. A thing in action, arising out of the violation of a right of property, or out of an obligation, may be transferred by the owner. Upon the death of the owner it passes to his personal representatives, except where, in the cases provided in the Code of Civil Procedure, it passes to his devisees or successor in office.

CHAPTER II. SHIPPING.

ARTICLE I. GENERAL PROVISIONS, §§ 960-966.

II. RULES OF NAVIGATION, §§ 970-978.

ARTICLE I.

GENERAL PROVISIONS.

SECTION 960. Definition of a ship and shipping terms.

961. Appurtenances and equipments.

962. Foreign and domestic navigation.

963. Foreign and domestic ships distinguished.

964. Several owners.

965. Owner for voyage.

966. Registry, &c.

§ 960. The term ship, or shipping, when used in this Code, includes steamboats, sailing vessels, canal boats, barges, and every structure adapted to be navigated from place to place for the transportation of merchandise or persons. [In effect July 1, 1874.]

§ 961. All things, belonging to the owners, which are on board a ship, and are connected with its proper use, for the

objects of the voyage and adventure in which the ship is engaged, are deemed its appurtenances.

§ 962. Ships are engaged either in foreign or domestic navigation, or in the fisheries. Ships are engaged in foreign navigation when passing to or from a foreign country; and in domestic navigation, when passing from place to place within the United States.

§ 963. A ship in a port of the State to which it belongs is called a domestic ship; in another port it is called a foreign ship.

§ 964. If a ship belongs to several persons, not partners, and they differ as to its use or repair, the controversy may be determined by any court of competent jurisdiction.

§ 965. If the owner of a ship commits its possession and navigation to another, that other, and not the owner, is responsible for its repairs and supplies.

§ 966. The registry, enrolment, and license of ships are regulated by acts of Congress.

ARTICLE II.

RULES OF NAVIGATION.

Section 970. Collisions.

1. Rules as to ships meeting each other.
2. The rule for sailing vessels.
3. Rules for steamers in narrow channels.
4. Same.
5. Rules for steam vessels on different courses.
6. Meeting of steamers.

971. Collision from breach of rules.

972. Breaches of such rules to imply wilful default.

973. Loss, how apportioned.

970. In the case of ships meeting, the following rules to be observed, in addition to those prescribed by that part of the Political Code which relates to navigation:

Whenever any ship, whether a steamer or sailing ship, proceeding in one direction, meets another ship, whether a steamer or sailing ship, proceeding in another direction, so that both ships were to continue their respective courses they

would pass so near as to involve the risk of a collision, the helms of both ships must be put to port so as to pass on the port side of each other; and this rule applies to all steamers and all sailing ships, whether on the port or starboard tack, and whether close-hauled or not, except where the circumstances of the case are such as to render a departure from the rule necessary in order to avoid immediate danger, and subject also to a due regard to the dangers of navigation, and, as regards sailing ships on the starboard tack close-hauled, to the keeping such ships under command;

2. In the case of sailing vessels, those having the wind fair must give way to those on a wind. When both are going by the wind, the vessel on the starboard tack must keep her wind, and the one on the larboard tack bear up strongly, passing each other on the larboard hand. When both vessels have the wind large or abeam, and meet, they must pass each other in the same way on the larboard hand, to effect which two last mentioned objects the helm must be put to port. Steam vessels must be regarded as vessels navigating with a fair wind, and should give way to sailing vessels on a wind of either tack;

3. A steamer navigating a narrow channel must, whenever it is safe and practicable, keep to that side of the fairway or mid channel which lies on the starboard side of the steamer;

4. A steamer when passing another steamer in such channel, must always leave the other upon the larboard side;

5. When steamers must inevitably or necessarily cross so near that, by continuing their respective courses, there would be a risk of collision, each vessel must put her helm to port, so as always to pass on the larboard side of each other;

6. The rules of this section do not apply to any case for which a different rule is provided by the regulations for the government of pilots of steamers approaching each other within sound of the steam-whistle, or by the regulations concerning lights upon steamers, prescribed under authority of the acts of Congress, approved August thirtieth, eighteen hundred and fifty-two, and April twenty-ninth, eighteen hundred and sixty-four.

For Rules of Navigation, &c., see Pol. Code, §§ 2360-2379.

§ 971. If it appears that a collision was occasioned by failure to observe any rule of the foregoing section, the owner of the ship by which such rule is infringed cannot recover compensation for damages sustained by the ship in such colli-

sion, unless it appears that the circumstances of the case made a departure from the rule necessary.

§ 972. Damage to person or property arising from the failure of a ship to observe any rule of section 970, must be deemed to have been occasioned by the wilful default of the person in charge of the deck of such ship at the time, unless it appears that the circumstances of the case made a departure from the rule necessary.

§ 973. Losses caused by collision are to be borne as follows:

1. If either party was exclusively in fault he must bear his own loss, and compensate the other for any loss he has sustained;
2. If neither was in fault, the loss must be borne by him on whom it falls;
3. If both were in fault, the loss is to be equally divided, unless it appears that there was a great disparity in fault, in which case the loss must be equitably apportioned.
4. If it cannot be ascertained where the fault lies, the loss must be equally divided.

CHAPTER III.

PRODUCTS OF THE MIND.

SECTION 980 How far the subject of ownership.

981. Joint authorship.

982. Transfer.

983. Effect of publication.

984. Subsequent inventor, author, &c.

985. Private writings.

§ 980. The author of any product of the mind, whether an invention, or a composition in letters or art, or a design, with or without delineation, or other graphical representation, has an exclusive ownership therein, and in the reproduction or expression thereof, which continues so long as the product and the representations or expressions thereof by him remain in his possession.

981. Unless otherwise agreed, a product of the mind in

the production of which several persons are jointly concerned, is owned by them as follows :

1. If the product is single, in equal proportions ;
2. If it is not single, in proportion to the contribution of each.

§ 982. The owner of any product of the mind, or of any representation or expression thereof, may transfer his property in the same.

§ 983. If the owner of a product of the mind intentionally makes it public, a copy or reproduction may be made public by any person, without responsibility to the owner, so far as the law of this State is concerned.

§ 984. If the owner of a product of the mind does not make it public, any other person subsequently and originally producing the same thing has the same right therein as the prior author, which is exclusive to the same extent against all persons except the prior author, or those claiming under him.

§ 985. Letters and other private communications in writing belong to the person to whom they are addressed and delivered ; but they cannot be published against the will of the writer, except by authority of law.

CHAPTER IV.

OTHER KINDS OF PERSONAL PROPERTY.

- SECTION 991.** Trade-marks.
992. Good will of business.
993. Same.
994. Title deeds.

§ 991. One who produces or deals in a particular thing, or conducts a particular business, may appropriate to his exclusive use, as a trade-mark, any form, symbol, or name, which has not been so appropriated by another, to designate the origin or ownership thereof ; but he cannot exclusively appropriate any designation, or part of a designation, which relates only to the name, quality, or the description of the

thing or business, or the place where the thing is produced, or the business is carried on. [In effect July 1, 1874.]

As to Trade-marks, see Pol. Code, §§ 8196-8198; Penal Code, §§ 350-354.

§ 992. The good will of a business is the expectation of continued public patronage, but it does not include a right to use the name of any person from whom it was acquired.

§ 993. The good will of a business is property, transferable like any other.

§ 994. Instruments essential to the title of real property, and which are not kept in a public office as a record, pursuant to law, belong to the person in whom, for the time being, such title may be vested, and pass with the title.

PART IV.

ACQUISITION OF PROPERTY.

TITLE I. MODES IN WHICH PROPERTY MAY BE ACQUIRED,
§§ 1000-1001.

II. OCCUPANCY, §§ 1006-1007.

III. ACCESSION, §§ 1013-1033.

IV. TRANSFER, §§ 1039-1231.

V. HOMESTEADS, §§ 1237-1269.

VI. WILLS, §§ 1270-1377.

VII. SUCCESSION, §§ 1383-1408.

VIII. WATER RIGHTS, §§ 1410-1422.

TITLE I.

MODES IN WHICH PROPERTY MAY BE ACQUIRED.

SECTION 1000. Property, how acquired.

- 1001. Acquisition of property by exercise of eminent domain.

§ 1000. PROPERTY is acquired by :

1. Occupancy ;
2. Accession ;
3. Transfer ;
4. Will ; or,
5. Succession.

§ 1001. Any person may, without further legislative action, acquire private property for any use specified in section 1238 of the Code of Civil Procedure, either by consent of the owner or by proceedings had under the provisions of Title VII., Part III., of the Code of Civil Procedure ; and any person seeking to acquire property for any of the uses mentioned in such title is "an agent of the State," or a "person

in charge of such use," within the meaning of those terms as used in such title. This section shall be in force from and after the fourth day of April, eighteen hundred and seventy-two.

Code Civ. Proc. §§ 1237-1263.

TITLE II. OCCUPANCY.

SECTION 1006. Simple occupancy.
1007. Prescription.

§ 1006. Occupancy for any period confers a title sufficient against all except the State and those who have title by prescription, accession, transfer, will, or succession.

§ 1007. Occupancy for the period prescribed by the Code of Civil Procedure as sufficient to bar an action for the recovery of the property confers a title thereto, denominated a title by prescription, which is sufficient against all.

Code Civ. Proc. §§ 835, 838, 840.

TITLE III. ACCESSION.

CHAPTER I. TO REAL PROPERTY, §§ 1013-1019.

II. TO PERSONAL PROPERTY, §§ 1025-1033.

CHAPTER I ACCESSION TO REAL PROPERTY.

SECTION 1013. Fixtures.

1014. Alluvion.

1015. Sudden removal of bank.

1016. Islands, in navigable streams.

1017. In unnavigable streams.

1018. Islands formed by division of stream.

1019. What fixtures tenant may remove.

§ 1013. When a person affixes his property to the land of another, without an agreement permitting him to remove it, the thing affixed, except as provided in section ten hundred and nineteen, belongs to the owner of the land, unless he chooses to require the former to remove it. [In effect July 1, 1874.]

56 Cal. 85; 57 Cal. 8; 58 Cal. 123.

§ 1014. Where, from natural causes, land forms by imperceptible degrees upon the bank of a river or stream, navigable or not navigable, either by accumulation of material or by the recession of the stream, such land belongs to the owner of the bank, subject to any existing right of way over the bank.

§ 1015. If a river or stream, navigable or not navigable, carries away, by sudden violence, a considerable and distinguishable part of a bank, and bears it to the opposite bank, or to another part of the same bank, the owner of the part carried away may reclaim it within a year after the owner of the land to which it has been united takes possession thereof.

§ 1016. Islands and accumulations of land, formed in the beds of streams which are navigable, belong to the State, if there is no title or prescription to the contrary.

§ 1017. An island, or an accumulation of land, formed in a stream which is not navigable, belongs to the owner of the shore on that side where the island or accumulation is formed; or, if not formed on one side only, to the owners of the shore on the two sides, divided by an imaginary line drawn through the middle of the river.

§ 1018. If a stream, navigable or not navigable, in forming itself a new arm, divides itself and surrounds land belonging to the owner of the shore, and thereby forms an island, the island belongs to such owner.

§ 1019. A tenant may remove from the demised premises, any time during the continuance of his term, anything affixed thereto for purposes of trade, manufacture, ornament, or domestic use, if the removal can be effected without injury to the premises, unless the thing has, by the manner in which it is affixed, become an integral part of the premises. [In effect July 1, 1874.]

58 Cal. 126.

CHAPTER II.

ACCESSION TO PERSONAL PROPERTY.

SECTION 1025. Accession by uniting several things.

1026. Principal part, what.

1027. Same.

1028. Uniting materials and workmanship.

1029. Inseparable materials.

1030. Materials of several owners.

1031. Wilful trespassers.

1032. Owner may elect between the thing and its value

1033. Wrongdoer liable in damages.

§ 1025. When things belonging to different owners have been united so as to form a single thing, and cannot be separated without injury, the whole belongs to the owner of the thing which forms the principal part; who must, however, reimburse the value of the residue to the other owner, or surrender the whole to him. *

§ 1026. That part is to be deemed the principal to which the other has been united only for the use, ornament, or completion of the former, unless the latter is the more valuable, and has been united without the knowledge of its owner, who may, in the latter case, require it to be separated and returned to him, although some injury should result to the thing to which it has been united.

§ 1027. If neither part can be considered the principal, within the rule prescribed by the last section, the more valuable, or, if the values are nearly equal, the more considerable in bulk, is to be deemed the principal part.

§ 1028. If one makes a thing from materials belonging to another, the latter may claim the thing on reimbursing the value of the workmanship, unless the value of the workmanship exceeds the value of the materials, in which case the thing belongs to the maker, on reimbursing the value of the materials.

§ 1029. Where one has made use of materials which in part belong to him and in part to another, in order to form a thing of a new description, without having destroyed any of the materials, but in such a way that they cannot be separated without inconvenience, the thing formed is common to both

proprietors ; in proportion, as respects the one, of the materials belonging to him, and as respects the other, of the materials belonging to him and the price of his workmanship.

§ 1030. When a thing has been formed by the admixture of several materials of different owners, and neither can be considered the principal substance, an owner without whose consent the admixture was made may require a separation, if the materials can be separated without inconvenience. If they cannot be thus separated, the owners acquire the thing in common, in proportion to the quantity, quality, and value of their materials ; but if the materials of one were far superior to those of the others, both in quantity and value, he may claim the thing on reimbursing to the others the value of their materials.

§ 1031. The foregoing sections of this article are not applicable to cases in which one willfully uses the materials of another without his consent ; but, in such cases, the product belongs to the owner of the material, if its identity can be traced.

§ 1032. In all cases where one whose material has been used without his knowledge, in order to form a product of a different description, can claim an interest in such product, he has an option to demand either restitution of his material in kind, in the same quantity, weight, measure, and quality, or the value thereof ; or where he is entitled to the product, the value thereof in place of the product.

§ 1033. One who wrongfully employs materials belonging to another is liable to him in damages, as well as under the foregoing provisions of this chapter.

TITLE IV.

TRANSFER.

- CHAPTER I. TRANSFER IN GENERAL, §§ 1039-1085.
II. TRANSFER OF REAL PROPERTY, §§ 1091-1115.
III. TRANSFER OF PERSONAL PROPERTY, §§ 1135-1153.
IV. RECORDING TRANSFERS OF REAL PROPERTY,
§§ 1158-1217.
V. UNLAWFUL TRANSFERS, §§ 1227-1231.

CHAPTER I.

TRANSFERS IN GENERAL.

- ARTICLE I DEFINITION OF TRANSFER, §§ 1039-1040.
II WHAT MAY BE TRANSFERRED, §§ 1044-47.
III. MODE OF TRANSFER, §§ 1052-1060.
IV. INTERPRETATION OF GRANTS, §§ 1066-1072.
V. EFFECT OF TRANSFER, 1083-1085.

ARTICLE I.

DEFINITION OF TRANSFER.

- SECTION 1039. Transfer, what.
1040. Voluntary transfer.

§ 1039. Transfer is an act of the parties, or of the law, by which the title to property is conveyed from one living person to another.

§ 1040. A voluntary transfer is an executed contract, subject to all rules of law concerning contracts in general; except that a consideration is not necessary to its validity.

ARTICLE II.

WHAT MAY BE TRANSFERRED.

- SECTION 1044. What may be transferred.
1045. Possibility.
1046. Right of reentry can be transferred.
1047. Owner ousted of possession may transfer.

§ 1044. Property of any kind may be transferred, except as otherwise provided by this article.

§ 1045. A mere possibility, not coupled with an interest, cannot be transferred.

§ 1046. A right of reëntry, or of repossession for breach of condition subsequent, can be transferred.

§ 1047. Any person claiming title to real property in the adverse possession of another may transfer it with the same effect as if in actual possession.
55 Cal. 128.

ARTICLE III.

MODE OF TRANSFER.

SECTION 1052. When oral.

1053. Grant, what.

1054. Delivery necessary.

1055. Date.

1056. Delivery to grantee is necessarily absolute.

1057. Delivery in escrow.

1058. Surrendering or cancelling grant does not reconvey

1059. Constructive delivery.

1060. Gratuitous grants take effect immediately ; exception. (Repealed.)

§ 1052. A transfer may be made without writing, in every case in which a writing is not expressly required by statute.

§ 1053. A transfer in writing is called a grant, or conveyance, or bill of sale. The term "grant," in this and the next two articles, includes all these instruments, unless it is specially applied to real property. [In effect July 1, 1874.]

65
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127
§ 1054. A grant takes effect, so as to vest the interest intended to be transferred, only upon its delivery by the grantor.

§ 1055. A grant duly executed is presumed to have been delivered at its date.

§ 1056. A grant cannot be delivered to the grantee conditionally. Delivery to him, or to his agent as such, is neces

sarily absolute, and the instrument takes effect thereupon, discharged of any condition on which the delivery was made.

§ 1057. A grant may be deposited by the grantor with a third person, to be delivered on performance of a condition, and, on delivery by the depositary, it will take effect. While in the possession of the third person, and subject to condition, it is called an escrow.

§ 1058. Redelivering a grant of real property to the grantor, or cancelling it, does not operate to retransfer the title.

§ 1059. Though a grant be not actually delivered into the possession of the grantee, it is yet to be deemed constructively delivered in the following cases :

1. Where the instrument is, by the agreement of the parties at the time of execution, understood to be delivered, and under such circumstances that the grantee is entitled to immediate delivery ; or,

2. Where it is delivered to a stranger for the benefit of the grantee, and his assent is shown, or may be presumed.

§ 1060 of said Code is repealed. [In effect July 1, 1874.]

ARTICLE IV.

INTERPRETATION OF GRANTS.

SECTION 1066. Grants, how interpreted.

1067. Limitations, how controlled.

1068. Recitals, when resorted to.

1069. Interpretation against grantor.

1070. Irreconcilable provisions.

1071. Meaning of " heirs " and " issue," in certain remainders.

1072. Words of inheritance unnecessary.

§ 1066. Grants are to be interpreted in like manner with contracts in general, except so far as is otherwise provided in this article.

§ 1067. A clear and distinct limitation in a grant is not controlled by other words less clear and distinct.

§ 1068. If the operative words of a grant are doubtful,

recourse may be had to its recitals to assist the construction.

§ 1069. A grant is to be interpreted in favor of the grantee, except that a reservation in any grant, and every grant by a public officer or body, as such, to a private party, is to be interpreted in favor of the grantor.

§ 1070. If several parts of a grant are absolutely irreconcilable, the former part prevails.

§ 1071. Where a future interest is limited by a grant to take effect on the death of any person without heirs, or heirs of his body, or without issue, or in equivalent words, such words must be taken to mean successors, or issue living at the death of the person named as ancestor.

§ 1072. Words of inheritance or succession are not requisite to transfer a fee in real property.

ARTICLE V.

EFFECT OF TRANSFER.

SECTION 1083. What title passes.

1084. Incidents.

1085. Grant may enure to benefit of stranger.

§ 1083. A transfer vests in the transferee all the actual title to the thing transferred which the transferrer then has, unless a different intention is expressed or is necessarily implied.

§ 1084. The transfer of a thing transfers also all its incidents, unless expressly excepted; but the transfer of an incident to a thing does not transfer the thing itself.

§ 1085. A present interest, and the benefit of a condition or covenant respecting property, may be taken by any natural person under a grant, although not named a party thereto.

CHAPTER II.

TRANSFER OF REAL PROPERTY.

ARTICLE I. MODE OF TRANSFER, §§ 1091-1095.

II. EFFECT OF TRANSFER, §§ 1104-1115.

ARTICLE I.

MODE OF TRANSFER.

SECTION 1091. Requisites for transfer of certain estates.

1092. Form of grant.

1093. Grant by married women, how acknowledged.

1094. Power of attorney of married women, how acknowledged.

1095. Attorney in fact, how must execute for principal.

§ 1091. An estate in real property, other than an estate at will or for a term not exceeding one year, can be transferred only by operation of law, or by an instrument in writing, subscribed by the party disposing of the same, or by his agent thereunto authorized by writing.

Code Civ. Pro. §§ 1971-1974.

§ 1092. A grant of an estate in real property may be made in substance as follows :

"I, A B, grant to C D all that real property situated in (insert name of county) County, State of California, bounded (or described) as follows : (here insert description, or if the land sought to be conveyed has a descriptive name, it may be described by the name, as, for instance, 'The Norris Ranch.')

"Witness my hand this (insert day) day of (insert month), 18—.

" A B."

See Act of March 11, 1874, Conveyancing by person who has changed his or her name, Appendix, p. 479.

§ 1093. No estate in the real property of a married woman passes by any grant purporting to be executed or acknowledged by her, unless the grant or instrument is acknowledged by her in the manner prescribed by sections 1186 and 1191.

55 Cal. 56.

§ 1094. A power of attorney of a married woman, authorizing the execution of an instrument transferring an estate in

her separate real property, has no validity for that purpose until acknowledged by her in the manner provided in sections 1186 and 1191.

§ 1095. When an attorney in fact executes an instrument transferring an estate in real property, he must subscribe the name of his principal to it, and his own name as attorney in fact.

ARTICLE II.

EFFECT OF TRANSFER.

SECTION 1104. What easements pass with property.

1105. When fee simple title is presumed to pass.

1106. Subsequently acquired title passes by operation of law.

1107. Grant, how far conclusive on purchasers.

1108. Conveyances by owner for life or for years.

1109. Grant made on condition subsequent.

1110. Grant on condition precedent.

1111. Grant of rents, reversions, and remainders.

1112. Boundary by highway, what passes.

1113. Implied covenants.

1114. What the term "incumbrances" embraces.

1115. Lineal and collateral warranties abolished.

§ 1104. A transfer of real property passes all easements attached thereto, and creates in favor thereof an easement to use other real property of the person whose estate is transferred in the same manner and to the same extent as such property was obviously and permanently used by the person whose estate is transferred, for the benefit thereof, at the time when the transfer was agreed upon or completed.

§ 1105. A fee simple title is presumed to be intended to pass by a grant of real property, unless it appears from the grant that a lesser estate was intended.

§ 1106. Where a person purports by proper instrument to grant real property in fee simple, and subsequently acquires any title, or claim of title thereto, the same passes by operation of law to the grantee, or his successors.

§ 1107. Every grant of an estate in real property is conclusive against the grantor, also against every one subsequently claiming under him, except a purchaser or incumbrancer who in good faith and for a valuable consideration

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acquires a title or lien by an instrument that is first duly recorded.

§ 1108. A grant made by the owner of an estate for life or years, purporting to transfer a greater estate than he could lawfully transfer, does not work a forfeiture of his estate, but passes to the grantee all the estate which the grantor could lawfully transfer.

§ 1109. Where a grant is made upon condition subsequent, and is subsequently defeated by the non-performance of the condition, the person otherwise entitled to hold under the grant must reconvey the property to the grantor or his successors, by grant, duly acknowledged for record.

56 Cal. 428; 58 Cal. 421.

§ 1110. An instrument purporting to be a grant of real property, to take effect upon condition precedent, passes the estate upon the performance of the condition. [In effect July 1, 1874.]

58 Cal. 423.

§ 1111. Grants of rents or of reversions or of remainders are good and effectual without attornments of the tenants; but no tenant who, before notice of the grant, shall have paid rent to the grantor, must suffer any damage thereby.

§ 1112. A transfer of land, bounded by a highway, passes the title of the person whose estate is transferred to the soil of the highway in front to the centre thereof, unless a different intent appears from the grant. [In effect July 1, 1874.]

§ 1113. From the use of the word "grant" in any conveyance by which an estate of inheritance or fee simple is to be passed, the following covenants, and none other, on the part of the grantor for himself and his heirs to the grantee, his heirs, and assigns, are implied, unless restrained by express terms contained in such conveyance:

1. That previous to the time of the execution of such conveyance, the grantor has not conveyed the same estate, or any right, title, or interest therein, to any person other than the grantee;

2. That such estate is at the time of the execution of such conveyance free from incumbrances done, made, or suffered by the grantor, or any person claiming under him.

Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance.

53 Cal. 618.

§ 1114. The term "incumbrances" includes taxes, assessments, and all liens upon real property. [In effect July 1, 1874.]

§ 1115. Lineal and collateral warranties, with all their incidents, are abolished; but the heirs and devisees of every person who has made any covenant or agreement in reference to the title of, in, or to any real property, are answerable upon such covenant or agreement to the extent of the land descended or devised to them, in the cases and in the manner prescribed by law.

CHAPTER III.

TRANSFER OF PERSONAL PROPERTY.

ARTICLE I. MODE OF TRANSFER, §§ 1135-1136.

II. WHAT OPERATES AS A TRANSFER, §§ 1140-1142.

III. GIFTS, §§ 1146-1153.

ARTICLE I.

MODE OF TRANSFER.

SECTION 1135. When must be in writing.

1136. Transfer by sale, &c.

§ 1135. An interest in a ship, or in an existing trust, can be transferred only by operation of law, or by a written instrument, subscribed by the person making the transfer, or by his agent.

§ 1136. The mode of transferring other personal property by sale is regulated by the title on that subject, in Division Third of this Code.

ARTICLE II.

WHAT OPERATES AS A TRANSFER.

SECTION 1140. Transfer of title under sale.

1141. Transfer of title under executory agreement for sale.

1142. When buyer acquires better title than seller has.

§ 1140. The title to personal property, sold or exchanged, passes to the buyer whenever the parties agree upon a present

transfer, and the thing itself is identified, whether it is separated from other things or not.

§ 1141. Title is transferred by an executory agreement for the sale or exchange of personal property only when the buyer has accepted the thing, or when the seller has completed it, prepared it for delivery, and offered it to the buyer, with intent to transfer the title thereto, in the manner prescribed by the chapter upon Offer of Performance.

§ 1142. Where the possession of personal property, together with a power to dispose thereof, is transferred by its owner to another person, an executed sale by the latter, while in possession, to a buyer in good faith and in the ordinary course of business, for value, transfers to such buyer the title of the former owner, though he may be entitled to rescind, and does rescind, the transfer made by him.

ARTICLE III.

GIFTS.

SECTION 1146. Gifts defined.

1147. Gift, how made.

1148. Gift not revocable.

1149. Gift in view of death, what.

1150. When gift presumed to be in view of death.

1151. Revocation of gift in view of death.

1152. Effect of will upon gift.

1153. When treated as legacy.

§ 1146. A gift is a transfer of personal property, made voluntarily, and without consideration.

57 Cal. 226.

§§ 1147. A verbal gift is not valid, unless the means of obtaining possession and control of the thing are given, nor, if it is capable of delivery, unless there is an actual or symbolical delivery of the thing to the donee.

§ 1148. A gift, other than a gift in view of death, cannot be revoked by the giver.

§ 1149. A gift in view of death is one which is made in contemplation, fear, or peril of death, and with intent that it shall take effect only in case of the death of the giver.

§ 1150. A gift made during the last illness of the giver, or under circumstances which would naturally impress him with an expectation of speedy death, is presumed to be a gift in view of death.

§ 1151. A gift in view of death may be revoked by the giver at any time, and is revoked by his recovery from the illness, or escape from the peril, under the presence of which it was made, or by the occurrence of any event which would operate as a revocation of a will made at the same time; but when the gift has been delivered to the donee, the rights of a *bonâ fide* purchaser from the donee before the revocation, shall not be affected by the revocation. [In effect July 1, 1874.]

§ 1152. A gift in view of death is not affected by a previous will; nor by a subsequent will, unless it expresses an intention to revoke the gift.

§ 1153. A gift in view of death must be treated as a legacy, so far as relates only to the creditors of the giver.

CHAPTER IV.

RECORDING TRANSFERS.

ARTICLE I. WHAT MAY BE RECORDED, §§ 1158-1165.

II. MODE OF RECORDING, §§ 1169-1178.

III. PROOF AND ACKNOWLEDGMENTS OF INSTRUMENTS, §§ 1180-1207

IV. EFFECT OF RECORDING OR OF THE WANT THEREOF, §§ 1218-1217

ARTICLE I.

WHAT MAY BE RECORDED.

SECTION 1158. What may be recorded.

1159. Judgments may be recorded without acknowledgment.

1160. Letters patent may be recorded without acknowledgment.

1161. Instruments must be acknowledged, except, &c.

1162. Same.

1163. Instruments executed under power of attorney not to be recorded until power is filed. (Repealed.)

1164. Transfers in trust, &c.

1165. Fees of recorder to be indorsed.

§ 1158. Any instrument or judgment affecting the title to or possession of real property may be recorded under this chapter.

§ 1159. Judgments affecting the title to or possession of real property, authenticated by the certificate of the clerk of the court in which such judgments were rendered, may be recorded without acknowledgment or further proof.

Recorder must file judgments. Polit. Code, § 4238.

§ 1160. Letters patent from the United States or from the State of California, executed and authenticated pursuant to existing law, may be recorded without acknowledgment or further proof; and where letters patent have been lost, or are beyond the control of any party derailing title therefrom, or for any reason they remain unrecorded, any person claiming title thereunder may cause a transcript of the copy of such letters patent kept by the government issuing the same, duly certified by the officer or individual having lawful custody of such copy, to be recorded in lieu of the original; and such recorded copy shall have *prima facie* the same force and effect as the original, for title or for evidence, until said original letters patent be recorded." [In effect May 31, 1878.]

§ 1161. Before an instrument can be recorded, unless it belongs to the class provided for in either sections eleven hundred and fifty-nine, eleven hundred and sixty, twelve hundred and two, or twelve hundred and three, its execution must be acknowledged by the person executing it, or if executed by a corporation, by its president or secretary, or proved by a subscribing witness, or as provided in sections eleven hundred and ninety-eight and eleven hundred and ninety-nine, and the acknowledgment or proof certified in the manner prescribed by Article III. of this chapter. [In effect July 1, 1874.]

§ 1162. An instrument, proved and certified pursuant to sections 1198 and 1199, may be recorded in the proper office if the original is at the same time deposited therein to remain for public inspection, but not otherwise.

§ 1163 of said Code is repealed. [In effect July 1, 1874.]

§ 1164. Transfers of property in trust for the benefit of

creditors, and transfers or liens on property by way of mortgage, are required to be recorded in the cases specified in the Titles on the special relation of Debtor and Creditor, and the Chapter on Mortgages respectively.

§ 1165. The recorder must in all cases indorse the amount of his fee for recordation on the instrument recorded. [Approved March 11, 1874. Sixty days.]

Polit. Code, § 4235.

ARTICLE II.

MODE OF RECORDING.

SECTION 1169. In what office.

1170. Instrument, when deemed recorded.

1171. Books of record.

1172. Duties of recorder.

1173. Transfer of vessels.

§ 1169. Instruments entitled to be recorded must be recorded by the county recorder of the county in which the real property affected thereby is situated.

§ 1170. An instrument is deemed to be recorded, when, being duly acknowledged or proved, and certified, it is deposited in the recorder's office with the proper officer for record. [In effect July 1, 1874].

57 Cal. 401.

§ 1171. Grants, absolute in terms, are to be recorded in one set of books, and mortgages in another.

§ 1172. The duties of county recorders, in respect to recording instruments, are prescribed by the Political Code.

Polit. Code, § 4235.

§ 1173. The mode of recording transfers of ships registered under the laws of the United States is regulated by acts of Congress.

ARTICLE III.

PROOF AND ACKNOWLEDGMENT OF INSTRUMENTS.

SECTION 1180. By whom acknowledgments may be taken in this State.

1181. Same.

1182. By whom taken without the State.

- SECTION 1183.** By whom taken without the United States.
- 1184. Deputy can take acknowledgment.
 - 1185. Requisites for acknowledgments.
 - 1186. Acknowledgment by married women.
 - 1187. Same.
 - 1188. Officer must indorse certificate.
 - 1189. General form of certificate.
 - 1190. Form of acknowledgment by corporation.
 - 1191. Form of certificate of acknowledgment by married women.
 - 1192. Form of certificate of acknowledgment by attorney in fact.
 - 1193. Officers must affix their signatures.
 - 1194. Certificate of authority of justices in certain cases.
 - 1195. Proof of execution, how made.
 - 1196. Witness must be personally known to officer.
 - 1197. Witness must prove, what.
 - 1198. Handwriting may be proved, when.
 - 1199. Evidence must prove, what.
 - 1200. Certificate of proof.
 - 1201. Officers authorized to do certain things.
 - 1202. When instrument is improperly certified, party may have action to correct error.
 - 1203. In certain cases parties interested may obtain judgment of proof of an instrument.
 - 1204. Effect of judgment in such action.
 - 1205. Conveyances heretofore made to be governed by then existing laws.
 - 1206. Recording, and as evidence, to be governed by then existing laws.
 - 1207. Certified copies as evidence. Records, what notice deemed from.

§ 1180. The proof or acknowledgment of an instrument may be made at any place within this State before a justice or clerk of the Supreme Court or a judge of the Superior Court. [In effect April 3, 1880.]

§ 1181. The proof or acknowledgment of an instrument may be made in this State within the city, city and county, county or district for which the officer was elected or appointed, before either :

1. A clerk of a court of record ; or,
2. A county recorder ; or,
3. A notary public ; or,
4. A justice of the peace.

[In effect April 3, 1880.]

1182. The proof or acknowledgment of an instrument may be made without this State, but within the United States, within the jurisdiction of the officer, before either :

A justice, judge, or clerk of any court of record of the United States ; or,

2. A justice, judge, or clerk of any court of record of any State; or,
3. A commissioner appointed by the governor of this State for that purpose; or,
4. A notary public; or,
5. Any other officer of the State where the acknowledgment is made authorized by its laws to take such proof or acknowledgment.

§ 1183. The proof or acknowledgment of an instrument may be made without the United States, before either :

1. A minister, commissioner, or charge d'affaires of the United States, resident and accredited in the country where the proof or acknowledgment is made; or,
2. A consul, vice consul, or consular agent of the United States, resident in the country where the proof or acknowledgment is made; or,
3. A judge of a court of record of the country where the proof or acknowledgment is made; or,
4. Commissioners appointed for such purposes by the governor of the State, pursuant to special statutes; or,
5. A notary public. [In effect July 1, 1874.]

§ 1184. When any of the officers mentioned in the four preceding sections are authorized by law to appoint a deputy, the acknowledgment or proof may be taken by such deputy, in the name of his principal.

§ 1185. The acknowledgment of an instrument must not be taken, unless the officer taking it knows, or has satisfactory evidence, on the oath or affirmation of a credible witness, that the person making such acknowledgment is the individual who is described in and who executed the instrument; or, if executed by a corporation, that the person making such acknowledgment is the president or secretary of such corporation.

§ 1186. The acknowledgment of a married woman to an instrument purporting to be executed by her, must not be taken, unless she is made acquainted by the officer with the contents of the instrument on an examination without the hearing of her husband; nor certified, unless she thereupon acknowledges to the officer that she executed the instrument, and that she does not wish to retract such execution.

55 Cal. 56; 58 Cal. 3.

§ 1187. A conveyance by a married woman has the same

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effect as if she were unmarried, and may be acknowledged in the same manner, except as mentioned in the last section; but such conveyance has no validity until so acknowledged.

55 Cal. 58.

§ 1188. An officer taking the acknowledgment of an instrument must indorse thereon, or attach thereto, a certificate substantially in the forms hereinafter prescribed. [In effect July 1, 1874.]

Code Civ. Procedure, § 1963.

§ 1189. The certificate of acknowledgment, unless it is otherwise in this article provided, must be substantially in the following form:

STATE OF —, }
County of —. } ss.

On this — day of —, in the year —, before me [here insert the name and quality of the officer], personally appeared —, known to me [or proved to me on the oath of —] to be the person whose name is subscribed to the within instrument, and acknowledged to me that he [or they] executed the same.

§ 1190. The certificate of acknowledgment of an instrument executed by a corporation must be substantially in the following form:

STATE OF —, }
County of —. } ss.

On this — day of —, in the year —, before me [here insert the name and quality of the officer], personally appeared —, known to me [or proved to me on the oath of —] to be the president [or the secretary] of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

§ 1191. The certificate of acknowledgment by a married woman must be substantially in the following form:

STATE OF —, }
County of —. } ss.

On this — day of —, in the year —, before me [here insert the name and quality of the officer], personally appeared —, known to me [or proved to me on the oath of —] to be the person whose name is subscribed to the within instrument, described as a married woman; and upon an examination without the hearing of her husband I made her acquainted with the contents of the instrument, and thereupon she ac

knowledge to me that she executed the same, and that she does not wish to retract such execution.

55 Cal. 56.

§ 1192. The certificate of acknowledgment by an attorney in fact must be substantially in the following form :

STATE OF —, } ss.
County of —. }

On this — day of —, in the year —, before me [here insert the name and quality of the officer], personally appeared —, known to me [or proved to me on the oath of —] to be the person whose name is subscribed to the within instrument as the attorney in fact of —, and acknowledged to me that he subscribed the name of — thereto as principal, and his own name as attorney in fact.

§ 1193. Officers taking and certifying acknowledgments or proof of instruments for record, must authenticate their certificates by affixing thereto their signatures, followed by the names of their offices ; also, their seals of office, if by the laws of the State or country where the acknowledgment or proof is taken, or by authority of which they are acting, they are required to have official seals.

§ 1194. The certificate of proof or acknowledgment, if made before a justice of the peace, when used in any county other than that in which he resides, must be accompanied by a certificate under the hand and seal of the clerk of the county in which the justice resides, setting forth that such justice, at the time of taking such proof or acknowledgment, was authorized to take the same, and that the clerk is acquainted with his handwriting, and believes that the signature to the original certificate is genuine.

§ 1195. Proof of the execution of an instrument, when not acknowledged, may be made either :

1. By the party executing it, or either of them ; or,
2. By a subscribing witness ; or,
3. By other witnesses, in cases mentioned in section 1198.

§ 1196. If by a subscribing witness, such witness must be personally known to the officer taking the proof to be the person whose name is subscribed to the instrument as a witness, or must be proved to be such by the oath of a credible witness.

§ 1197. The subscribing witness must prove that the person whose name is subscribed to the instrument as a party is the person described in it, and that such person executed it, and that the witness subscribed his name hereto as a witness.

§ 1198. The execution of an instrument may be established by proof of the handwriting of the party and of a subscribing witness, if there is one, in the following cases :

1. When the parties and all the subscribing witnesses are dead ; or,
2. When the parties and all the subscribing witnesses are non-residents of the State ; or,
3. When the place of their residence is unknown to the party desiring the proof, and cannot be ascertained by the exercise of due diligence ; or,
4. When the subscribing witness conceals himself, or cannot be found by the officer by the exercise of due diligence in attempting to serve the subpoena or attachment ; or,
5. In case of the continued failure or refusal of the witness to testify, for the space of one hour, after his appearance.

§ 1199. The evidence taken under the preceding section must satisfactorily prove to the officer the following facts :

1. The existence of one or more of the conditions mentioned therein ; and,
2. That the witness testifying knew the person whose name purports to be subscribed to the instrument as a party, and is well acquainted with his signature, and that it is genuine ; and,
3. That the witness testifying personally knew the person who subscribed the instrument as a witness, and is well acquainted with his signature, and that it is genuine ; and,
4. The place of residence of the witness. [In effect July 1, 874.]

§ 1200. An officer taking proof of the execution of any instrument must, in his certificate indorsed thereon or attached hereto, set forth all the matters required by law to be done or shown by him, or proved before him on the proceeding, together with the names of all the witnesses examined before him, their places of residence respectively, and the substance of their testimony.

§ 1201. Officers authorized to take the proof of instruments are authorized in such proceedings :

1. To administer oaths or affirmations, as prescribed in section 2093, Code of Civil Procedure ;
2. To employ and swear interpreters ;
3. To issue subpoena, as prescribed in section 1986, Code of Civil Procedure ;
4. To punish for contempt, as prescribed in sections 1991; 1993, 1994, Code of Civil Procedure.

The civil damages and forfeiture to the party aggrieved are prescribed in section 1992, Code of Civil Procedure.

§ 1202. When the acknowledgment or proof of the execution of an instrument is properly made, but defectively certified, any party interested may have an action in the District Court to obtain a judgment correcting the certificate.

53 Cal. 485.

§ 1203. Any person interested under an instrument entitled to be proved for record may institute an action in the District Court against the proper parties to obtain a judgment proving such instrument.

53 Cal. 485.

§ 1204. A certified copy of the judgment in a proceeding instituted under either of the two preceding sections, showing the proof of the instrument, and attached thereto, entitles such instrument to record, with like effect as if acknowledged.

§ 1205. The legality of the execution, acknowledgment, proof, form, or record of any conveyance or other instrument made before this Code goes into effect, executed, acknowledged, proved, or recorded is not affected by anything contained in this chapter, but depends for its validity and legality upon the laws in force when the act was performed.

53 Cal. 486.

§ 1206. All conveyances of real property made before this Code goes into effect, and acknowledged or proved according to the laws in force at the time of such making and acknowledgment or proof, have the same force as evidence, and may be recorded, in the same manner and with the like effect, as conveyances executed and acknowledged in pursuance of this chapter.

§ 1207. Any instrument affecting real property, which was, previous to the thirtieth day of January, one thousand eight hundred and seventy-three, copied into the proper book of record, kept in the office of any county recorder, shall be

deemed to impart, after that date, notice of its contents to subsequent purchasers and incumbancers, notwithstanding any defect, omission, or informality in the execution of the instrument, or in the certificate of acknowledgment thereof, or the absence of any such certificate; but nothing herein shall be deemed to affect the rights of purchasers or incumbancers previous to that date. Duly certified copies of the record of any such instrument may be read in evidence, with like effect as copies of an instrument duly acknowledged and recorded, provided it be first shown that the original instrument was genuine. [In effect July 1, 1874.]

ARTICLE IV.

EFFECT OF RECORDING, OR THE WANT THEREOF.

SECTION 1213. Record, where and to whom notice.

1214. Conveyances to be recorded, or are void, &c.

1215. Conveyance defined.

1216. Powers of attorney, how revoked.

1217. Unrecorded instrument valid between the parties.

§ 1213. Every conveyance of real property, acknowledged or proved, and certified and recorded as prescribed by law, from the time it is filed with the recorder for record, is constructive notice of the contents thereof to subsequent purchaser and mortgagees.

46 Cal. 606; 57 Cal. 399.

§ 1214. Every conveyance of real property other than a lease for a term not exceeding one year, is void as against any subsequent purchaser or mortgagee of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded.

44 Cal. 606; 58 Cal. 619.

§ 1215. The term "conveyance," as used in sections 1213 and 1214, embraces every instrument in writing by which any estate or interest in real property is created, aliened, mortgaged, or encumbered, or by which the title to any real property may be affected, except wills.

46 Cal. 607.

§ 1216. No instrument containing a power to convey or execute instruments affecting real property, which has been

recorded, is revoked by any act of the party by whom it was executed, unless the instrument containing such revocation is also acknowledged or proved, certified and recorded, in the same office in which the instrument containing the power was recorded.

§ 1217. An unrecorded instrument is valid as between the parties thereto and those who have notice thereof.

CHAPTER V.

UNLAWFUL TRANSFERS.

SECTION 1227. Certain instruments void against purchasers, &c.

1228. Not void against purchaser having notice, unless fraud is mutual.

1229. Power to revoke, when deemed executed.

1230. Same.

1231. Other provisions.

§ 1227. Every instrument, other than a will, affecting an estate in real property, including every charge upon real property, or upon its rents or profits, made with intent to defraud prior or subsequent purchasers thereof, or incumbrancers thereon, is void as against every purchaser or incumbrancer, for value, of the same property, or the rents or profits thereof.

§ 1228. No instrument is to be avoided under the last section, in favor of a subsequent purchaser or incumbrancer having notice thereof at the time his purchase was made, or his lien acquired, unless the person in whose favor the instrument was made was privy to the fraud intended.

§ 1229. Where a power to revoke or modify an instrument affecting the title to, or the enjoyment of, an estate in real property, is reserved to the grantor, or given to any other person, a subsequent grant of, or charge upon, the estate, by the person having the power of revocation, in favor of a purchaser or incumbrancer for value, operates as a revocation of the original instrument, to the extent of the power, in favor of such purchaser or incumbrancer.

§ 1230. Where a person having a power of revocation, within the provisions of the last section, is not entitled to execute it until after the time at which he makes such a grant or charge as is described in that section, the power is deemed to be executed as soon as he is entitled to execute it.

§ 1231. Other provisions concerning unlawful transfers are contained in Part II., Division Fourth, of this Code, concerning the Special Relations of Debtor and Creditor.

TITLE V.

HOMESTEADS.

CHAPTER I. GENERAL PROVISIONS, §§ 1237-1261.

II. HOMESTEAD OF THE HEAD OF A FAMILY, §§ 1262-1265.

III. HOMESTEAD OF OTHER PERSONS, §§ 1266-1269.

CHAPTER I.

GENERAL PROVISIONS.

- SECTION** 1237. Homestead, of what it consists
1238. From what it may be carved.
1239. From what not.
1240. Exempt from forced sale
1241. Subject to, when.
1242. How conveyed or incumbered
1243. How abandoned.
1244. Same.
1245. Proceedings on execution against homestead.
1246. Same.
1247. Same.
1248. Same.
1249. Same.
1250. Same.
1251. Same.
1252. Same.
1253. Same.
1254. Same.
1255. Same.
1256. Same.
1257. After sale, money equal to homestead exemption protected.

SECTION 1258. Compensation of appraisers.

1259. Costs.

1260. Who may select homestead, value of.

1261. Head of family defined.

§ 1237. The homestead consists of the dwelling-house in which the claimant resides, and the land on which the same is situated, selected as in this title provided. [In effect July 1, 1874.]

52 Cal. 630. 1874

§ 1238. If the claimant be married, the homestead may be selected from the community property, or the separate property of the husband, or, with the consent of the wife, from her separate property. When the claimant is not married, but is the head of a family, within the meaning of section one thousand two hundred and sixty-one, the homestead may be selected from any of his or her property. [In effect July 1, 1874.]

§ 1239. The homestead cannot be selected from the separate property of the wife without her consent, shown by her making, or joining in making, the declaration of homestead. [In effect July 1, 1874.]

§ 1240. The homestead is exempt from execution or forced sale, except as in this title provided.

54 Cal. 83. 1874

§ 1241. The homestead is subject to execution or forced sale in satisfaction of judgments obtained:

1. Before the declaration of homestead was filed for record, and which constitute liens upon the premises;

2. On debts secured by mechanics', laborers', or vendors' liens upon the premises;

3. On debts secured by mortgages on the premises, executed and acknowledged by the husband and wife, or by an unmarried claimant;

4. On debts secured by mortgages on the premises, executed and recorded before the declaration of homestead was filed for record. [In effect April 5, 1880.]

58 Cal. 1, 378, 429, 598.

§ 1242. The homestead of a married person cannot be conveyed or incumbered, unless the instrument by which it is conveyed or incumbered is executed and acknowledged by both husband and wife.

See Act of April 1, 1872, To promote Irrigation, Appendix, p. 474.

§ 1243. A homestead can be abandoned only by a declaration of abandonment, or a grant thereof, executed and acknowledged :

1. By the husband and wife, if the claimant is married ;
2. By the claimant, if unmarried.

58 Cal. 15.

§ 1244. A declaration of abandonment is effectual only from the time it is filed in the office in which the homestead was recorded.

§ 1245. When an execution for the enforcement of a judgment obtained in a case not within the classes enumerated in section 1241, is levied upon the homestead, the judgment creditor may apply to the Superior Court of the county in which the homestead is situated for the appointment of persons to appraise the value thereof. [In effect April 5, 1880.]

§ 1246. The application must be made upon a verified petition, showing :

1. The fact that an execution has been levied upon the homestead ;
2. The name of the claimant ;
3. That the value of the homestead exceeds the amount of the homestead exemption.

§ 1247. The petition must be filed with the clerk of the Superior Court. [In effect April 5, 1880.]

§ 1248. A copy of the petition, with a notice of the time and place of hearing, must be served upon the claimant, at least two days before the hearing.

§ 1249. At the hearing the judge may, upon proof of the service of a copy of the petition and notice, and of the facts stated in the petition, appoint three disinterested residents of the county to appraise the value of the homestead.

1250. The persons appointed, before entering upon the performance of their duties, must take an oath to faithfully perform the same.

1251. They must view the premises and appraise the same thereof, and if the appraised value exceeds the homestead exemption they must determine whether the land can be divided without material injury.

§ 1252. Within fifteen days after their appointment they must make to the judge a report in writing, which report must show the appraised value and their determination upon the matter of a division of the land claimed.

§ 1253. If, from the report, it appears to the judge that the land claimed can be divided without material injury, he must, by an order, direct the appraisers to set off to the claimant so much of the land, including the residence, as will amount in value to the homestead exemption, and the execution may be enforced against the remainder of the land.

52 Cal. 680.

§ 1254. If, from the report, it appears to the judge that the land claimed exceeds in value the amount of the homestead exemption, and that it cannot be divided, he must make an order directing its sale under the execution.

§ 1255. At such sale no bid must be received, unless it exceeds the amount of the homestead exemption.

§ 1256. If the sale is made, the proceeds thereof, to the amount of the homestead exemption, must be paid to the claimant, and the balance applied to the satisfaction of the execution.

§ 1257. The money paid to the claimant is entitled, for the period of six months thereafter, to the same protection against legal process and the voluntary disposition of the husband, which the law gives to the homestead. [In effect July 1, 1874.]

§ 1258. The court must fix the compensation of the appraisers, not to exceed five dollars per day each for the time actually engaged.

§ 1259. The execution creditor must pay the costs of these proceedings in the first instance; but in the cases provided for in sections 1253 and 1254 the amount so paid must be added as costs on execution, and collected accordingly.

§ 1260. Homesteads may be selected and claimed :

1. Of not exceeding five thousand dollars in value by any head of a family ;
2. Of not exceeding one thousand dollars in value by any other person.

§ 1261. The phrase "head of a family," as used in this title, includes within its meaning:

1. The husband, when the claimant is a married person;
2. Every person who has residing on the premises with him or her and under his or her care and maintenance, either:
 - (1.) His or her minor child, or the minor child of his or her deceased wife or husband;
 - (2.) A minor brother or sister, or the minor child of a deceased brother or sister;
 - (3.) A father, mother, grandfather, or grandmother;
 - (4.) The father, mother, grandfather, or grandmother of a deceased husband or wife;
 - (5.) An unmarried sister, or any other of the relatives mentioned in this section who have attained the age of majority, and are unable to take care of or support themselves. [In effect July 1, 1874.]

Property exempt from execution to be set apart for family. Code Civ Proc. §§ 1465-1470.

CHAPTER II.

HOMESTEAD OF THE HEAD OF A FAMILY.

SECTION 1262. Mode of selection.

1263. Declaration of homestead.

1264. Declaration must be recorded.

1265. Tenure by which homestead is held.

§ 1262. In order to select a homestead, the husband or other head of a family, or in case the husband has not made such selection, the wife must execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of homestead, and file the same for record. [In effect July 1, 1874.]

§ 1263. The declaration of homestead must contain:

1. A statement, showing that the person making it is the head of a family; or, when the declaration is made by the wife, showing that her husband has not made such declaration and that she therefore makes the declaration for their benefit;

A statement that the person making it is residing on the premises, and claims them as a homestead;

A description of the premises;

An estimate of their actual cash value. [In effect July 74.]

§ 1264. The declaration must be recorded in the office of the recorder of the county in which the land is situated.

Polit. Code, § 4285.

§ 1265. From and after the time the declaration is filed for record, the premises therein described constitute a homestead. If the selection was made by a married person from the community property, the land, on the death of either of the spouses, vests in the survivor, subject to no other liability than such as exists or has been created under the provisions of this title; in other cases, upon the death of the person whose property was selected as a homestead, it shall go to his heirs or devisees, subject to the power of the Superior Court to assign the same for a limited period to the family of the decedent; but in no case shall it be held liable for the debts of the owner, except as provided in this title. [In effect April 5, 1880.]

Code Civ. Proc. §§ 1470, 1474.

Homestead set apart by Probate Court Code Civ. Proc. §§ 1474-1478
50 Cal. 543; 52 Cal. 297; 54 Cal. 501.

CHAPTER III.

HOMESTEAD OF OTHER PERSONS.

SECTION 1266. Mode of selection.

1267. Declaration of homestead.

1268. Declaration must be recorded.

1269. Effect of filing for record the declaration of homestead.

§ 1266. Any person other than the head of a family, in the selection of a homestead, must execute and acknowledge, in the same manner as a grant of real property is acknowledged, a "Declaration of Homestead."

§ 1267. The declaration must contain everything required by the second, third, and fourth subdivisions of section 1263.

§ 1268. The declaration must be recorded in the office of the county recorder of the county in which the land is situated.

Polit. Code, § 4285

§ 1269. From and after the time the declaration is filed for record, the land described therein is a homestead.

TITLE VI.

WILLS.

CHAPTER I. EXECUTION AND REVOCATION OF WILLS, §§ 1270-1813.

II. INTERPRETATION OF WILLS, §§ 1317-1351.

III. GENERAL PROVISIONS RELATING TO WILLS, §§ 1357-1877.

CHAPTER I.

EXECUTION AND REVOCATION OF WILLS.

- SECTION** 1270. Who may make a will.
1271. Monomaniac incompetent. (Repealed.)
1272. Will, or part thereof, procured by fraud.
1273. Separate property of married women.
1274. What may pass by will.
1275. Who may take by will.
1276. Written will, how to be executed.
1277. Definition of an olographic will.
1278. Witness to add residence.
1279. Mutual will.
1280. Competency of subscribing witness.
1281. Conditional will.
1282. Gifts to subscribing witnesses void. Creditors competent witnesses.
1283. Witness who is a devisee, and who would be entitled to share of testator's estate if no will, entitled to share to amount of devise.
1284. Will made out of this State. (Repealed.)
1285. Will not duly executed, void.
1286. Subsequent change of domicile. (Repealed.)
1287. Republication by codicil.
1288. Nuncupative will, how to be executed.
1289. Requisites of a valid nuncupative will.
1290. Proof of nuncupative wills.
1291. Probate of nuncupative wills.
1292. Written will, how revoked.
1293. Evidence of revocation

- Sections 1294.** Revocation by obliteration on face of will. (Repealed.)
 1295. Revocation of duplicate.
 1296. Revocation by subsequent will.
 1297. Antecedent not revived by revocation of subsequent will.
 1298. Revocation by marriage and birth of issue.
 1299. Effect of marriage of a man on his will.
 1300. Effect of a marriage of a woman on her will.
 1301. Contract of sale not a revocation.
 1302. Mortgage not a revocation of will.
 1303. Conveyance, when not a revocation.
 1304. When it is a revocation.
 1305. Revocation of codicils.
 1306. Afterborn child, unprovided for, to succeed.
 1307. Children or issue of children of testator unprovided for by his will.
 1308. Share of afterborn child, out of what part of estate to be paid.
 1309. Advancement during lifetime of testator.
 1310. Death of devisee, being relation of testator, in lifetime of testator, leaving lineal descendants.
 1311. Devises of land, how construed.
 1312. Will to pass rights acquired after the making thereof.
 1318. Restriction to devise for charitable uses.

§ 1270. Every person over the age of eighteen years, of sound mind, may, by last will, dispose of all his estate, real and personal, and such estate not disposed of by will is succeeded to as provided in Title VII. of this part, being chargeable in both cases with the payment of all the decedent's debts, as provided in the Code of Civil Procedure.

§ 1271 of said Code is repealed. [In effect July 1, 1874.]

§ 1272. A will, or a part of a will, procured to be made by duress, menace, fraud, or undue influence, may be denied probate; and a revocation, procured by the same means, may be declared void.

Code Civil Procedure, § 1812.

§ 1273. A married woman may dispose of all her separate estate by will, without the consent of her husband, and may alter or revoke the will in like manner as if she were single. Her will must be executed and proved in like manner as other wills. [In effect July 1, 1874.]

§ 1274. Every estate and interest in real or personal property, to which heirs, husband, widow, or next of kin might succeed, may be disposed of by will, except as otherwise provided in sections 1401 and 1402.

§ 1275. A testamentary disposition may be made to any person capable by law of taking the property so disposed of, except corporations other than those formed for scientific, literary, or solely educational purposes, cannot take under a will, unless expressly authorized by statute. Effect immediately. [Approved January 29, 1874.]

§ 1276. Every will, other than a nuncupative will, must be in writing; and every will, other than an olographic will, and a nuncupative will, must be executed and attested as follows:

1. It must be subscribed at the end thereof by the testator himself, or some person in his presence and by his direction must subscribe his name thereto;

2. The subscription must be made in the presence of the attesting witnesses, or be acknowledged by the testator to them, to have been made by him or by his authority;

3. The testator must, at the time of subscribing or acknowledging the same, declare to the attesting witnesses that the instrument is his will; and,

4. There must be two attesting witnesses, each of whom must sign his name as a witness, at the end of the will, at the testator's request, and in his presence.

54 Cal. 517.

§ 1277. An olographic will is one that is entirely written, dated, and signed by the hand of the testator himself. It is subject to no other form, and may be made in or out of this State, and need not be witnessed.

May be proven in same manner as other private writings. Code Civil Procedure, § 1309.

§ 1278. A witness to a written will must write, with his name, his place of residence; and a person who subscribes the testator's name, by his direction, must write his own name as a witness to the will. But a violation of this section does not affect the validity of the will.

54 Cal. 518.

1279. A conjoint or mutual will is valid, but it may be ked by any of the testators, in like manner with any other

Cal. 380.

1280. If the subscribing witnesses to a will are compe- at the time of attesting its execution, their subsequent incompetency, from whatever cause it may arise, does not pre-

vent the probate and allowance of the will, if it is otherwise satisfactorily proved.

§ 1281. A will, the validity of which is made by its own terms conditional, may be denied probate, according to the event, with reference to the condition.

§ 1282. All beneficial devises, legacies, and gifts whatever, made or given in any will to a subscribing witness thereto, are void, unless there are two other competent subscribing witnesses to the same; but a mere charge on the estate of the testator for the payment of debts does not prevent his creditors from being competent witnesses to his will.

§ 1283. If a witness, to whom any beneficial devise, legacy, or gift, void by the preceding section, is made, would have been entitled to any share of the estate of the testator, in case the will should not be established, he succeeds to so much of the share as would be distributed to him, not exceeding the devise or bequest made to him in the will, and he may recover the same of the other devisees or legatees named in the will, in proportion to and out of the parts devised or bequeathed to them. [In effect July 1, 1874.]

§ 1284 of said Code is repealed. [In effect July 1, 1874.]

§ 1285. No will made out of this State is valid as a will in this State, unless executed according to the provisions of this chapter. [In effect July 1, 1874.]

Code Civ. Proc. § 1822.

§ 1286 of said Code is repealed. [In effect July 1, 1874.]

§ 1287. The execution of a codicil, referring to a previous will, has the effect to republish the will, as modified by the codicil.

§ 1288. A nuncupative will is not required to be in writing, nor to be declared or attested with any formalities.

How admitted to probate. Code Civ. Proc. § 1844.

§ 1289. To make a nuncupative will valid, and to entitle it to be admitted to probate, the following requisites must be observed :

1. The estate bequeathed must not exceed in value the sum of one thousand dollars;

2. It must be proved by two witnesses who were present at the making thereof, one of whom was asked by the testator, at the time to bear witness that such was his will, or to that effect;

3. The decedent must, at the time, have been in actual military service in the field, or doing duty on shipboard at sea, and in either case in actual contemplation, fear, or peril of death; or the decedent must have been, at the time, in expectation of immediate death from an injury received the same day. [In effect July 1, 1874.]

§ 1290. No proof must be received of any nuncupative will, unless it is offered within six months after speaking the testamentary words, nor unless the words, or the substance thereof, were reduced to writing within thirty days after they were spoken.

Code Civ. Proc. § 1844.

§ 1291. No probate of any nuncupative will must be granted for fourteen days after the death of the testator, nor must any nuncupative will be at any time proved, unless the testamentary words, or the substance thereof, be first committed to writing, and process issued to call in the widow, or other persons interested, to contest the probate of such will, if they think proper.

Code Civ. Proc. § 1845.

§ 1292. Except in the cases in this chapter mentioned, no written will, nor any part thereof, can be revoked or altered otherwise than:

1. By a written will, or other writing of the testator, declaring such revocation or alteration, and executed with the same formalities with which a will should be executed by such testator; or,

2. By being burnt, torn, cancelled, obliterated, or destroyed, with the intent and for the purpose of revoking the same, by the testator himself, or by some person in his presence and by his direction.

1293. When a will is cancelled or destroyed by any person other than the testator, the direction of the testator,

and the fact of such injury or destruction, must be proved by two witnesses.

§ 1294 of said Code is repealed. [In effect July 1, 1874.]

§ 1295. The revocation of a will, executed in duplicate, may be made by revoking one of the duplicates.

§ 1296. A prior will is not revoked by a subsequent will, unless the latter contains an express revocation, or provisions wholly inconsistent with the terms of the former will; but in other cases the prior will remains effectual so far as consistent with the provisions of the subsequent will.

§ 1297. If, after making a will, the testator duly makes and executes a second will, the destruction, cancellation, or revocation of such second will does not revive the first will, unless it appears by the terms of such revocation that it was the intention to revive and give effect to the first will, or unless, after such destruction, cancellation, or revocation, the first will is duly republished.

§ 1298. If, after having made a will, the testator marries, and has issue of such marriage, born either in his lifetime or after his death, and the wife or issue survives him, the will is revoked, unless provision has been made for such issue by some settlement, or unless such issue are provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of such revocation can be received.

§ 1299. If, after making a will, the testator marries, and the wife survives the testator, the will is revoked, unless provision has been made for her by marriage contract, or unless she is provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of revocation must be received.

§ 1300. A will, executed by an unmarried woman, is revoked by her subsequent marriage, and is not revived by the death of her husband.

§ 1301. An agreement made by a testator, for the sale or

transfer of property disposed of by a will previously made, does not revoke such disposal; but the property passes by the will, subject to the same remedies on the testator's agreement, for a specific performance or otherwise against the devisees or legatees, as might be had against the testator's successors, if the same had passed by succession.

§ 1802. A charge or incumbrance upon any estate, for the purpose of securing the payment of money or the performance of any covenant or agreement, is not a revocation of any will relating to the same estate which was previously executed; but the devise and legacies therein contained must pass, subject to such charge or incumbrance.

§ 1803. A conveyance, settlement, or other act of a testator, by which his interest in a thing previously disposed of by his will is altered, but not wholly divested, is not a revocation; but the will passes the property which would otherwise devolve by succession.

§ 1804. If the instrument by which an alteration is made in the testator's interest in a thing previously disposed of by his will expresses his intent that it shall be a revocation, or if it contains provisions wholly inconsistent with the terms and nature of the testamentary disposition, it operates as a revocation thereof, unless such inconsistent provisions depend on a condition or contingency by reason of which they do not take effect.

§ 1805. The revocation of a will revokes all its codicils.

§ 1806. Whenever a testator has a child born after the making of his will, either in his lifetime or after his death, and dies leaving such child unprovided for by any settlement, and neither provided for nor in any way mentioned in his will, the child succeeds to the same portion of the testator's real and personal property that he would have succeeded to if the testator had died intestate.

§ 1807. When any testator omits to provide in his will for any of his children, or for the issue of any deceased child, unless it appears that such omission was intentional, such child, or the issue of such child, must have the same share in the estate of the testator as if he had died intestate, and succeeds thereto as provided in the preceding section.

§ 1308. When any share of the estate of a testator is assigned to a child born after the making of a will, or to a child, or the issue of a child, omitted in the will, as hereinbefore mentioned, the same must first be taken from the estate not disposed of by the will, if any; if that is not sufficient, so much as may be necessary must be taken from all the devisees or legatees, in proportion to the value they may respectively receive under the will, unless the obvious intention of the testator in relation to some specific devise or bequest, or other provision in the will, would thereby be defeated; in such case, such specific devise, legacy, or provision may be exempted from such apportionment, and a different apportionment, consistent with the intention of the testator, may be adopted.

§ 1309. If such children, or their descendants, so unprovided for, had an equal proportion of the testator's estate bestowed on them in the testator's lifetime, by way of advancement, they take nothing in virtue of the provisions of the three preceding sections.

Code Civ. Proc. §§ 1346, 1686.

§ 1310. When any estate is devised to any child, or other relation of the testator, and the devisee dies before the testator, leaving lineal descendants, such descendants take the estate so given by the will, in the same manner as the devisee would have done had he survived the testator.

§ 1311. Every devise of land in any will conveys all the estate of the devisor therein, which he could lawfully devise, unless it clearly appears by the will that he intended to convey a less estate.

§ 1312. Any estate, right, or interest in lands acquired by the testator after the making of his will, passes thereby and in like manner as if title thereto was vested in him at the time of making the will, unless the contrary manifestly appears by the will to have been the intention of the testator. Every will made in express terms devising, or in any other terms denoting the intent of the testator to devise all the real estate of such testator, passes all the real estate which such testator was entitled to devise at the time of his decease. [In effect July 1, 1874.]

Code Civ. Proc. §§ 1298-1697.

§ 1313. No estate, real or personal, shall be bequeathed or devised to any charitable or benevolent society, or corporation, or to any person or persons in trust for charitable uses, except the same be done by will duly executed at least thirty days before the decease of the testator; and if so made, at least thirty days prior to such death, such devise or legacy, and each of them, shall be valid; *provided*, that no such devises or bequests shall collectively exceed one third of the estate of the testator leaving legal heirs, and in such case a *pro rata* deduction from such devises or bequests shall be made so as to reduce the aggregate thereof to one third of such estate; and all dispositions of property made contrary hereto shall be void, and go to the residuary legatee or devisee, next of kin, or heirs, according to law. [Approved March 18, 1874. Immediate effect.]

58 Cal. 484, 514.

CHAPTER II.

INTERPRETATION OF WILLS, AND EFFECT OF VARIOUS PROVISIONS.

- SECTION 1317.** Testator's intention to be carried out.
 1318. Intention to be ascertained from the will.
 1319. Rules of interpretation.
 1320. Several instruments are to be taken together.
 1321. Harmonizing various parts.
 1322. In what case devise not affected.
 1323. When ambiguous or doubtful.
 1324. Words taken in ordinary sense.
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 1326. Intestacy to be avoided.
 1327. Effect of technical words.
 1328. Technical words not necessary.
 1329. Certain words not necessary to pass a fee.
 1330. Power to devise, how executed by terms of will.
 1331. Devise or bequest of all real or all personal property, or both.
 1332. Residuary clause.
 1333. Same
 1334. "Heirs," "relatives," "issue," "descendants," &c.
 1335. Words of donation and of limitation.
 1336. To what time words refer.
 1337. Devise or bequest to a class.
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 1340. Mistakes and omissions.
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- SECTION 1343.** Death of devisee or legatee.
 1344. Interests in remainder are not affected.
 1345. Conditional devises and bequests.
 1346. Condition precedent, what.
 1347. Effect of condition precedent.
 1348. Conditions precedent, when deemed performed.
 1349. Condition subsequent, what.
 1350. Devisees, &c., take as tenants in common.
 1351. Advancements, when ademption.

§ 1317. A will is to be construed according to the intention of the testator. Where his intention cannot have effect to its full extent, it must have effect as far as possible.

§ 1318. In case of uncertainty arising upon the face of a will, as to the application of any of its provisions, the testator's intention is to be ascertained from the words of the will, taking into view the circumstances under which it was made, exclusive of his oral declarations.

§ 1319. In interpreting a will, subject to the law of this State, the rules prescribed by the following sections of this chapter are to be observed, unless an intention to the contrary clearly appears.

§ 1320. Several testamentary instruments, executed by the same testator, are to be taken and construed together as one instrument.

§ 1321. All the parts of a will are to be construed in relation to each other, and so as, if possible, to form one consistent whole; but where several parts are absolutely irreconcilable, the latter must prevail.

§ 1322. A clear and distinct devise or bequest cannot be affected by any reasons assigned therefor, or by any other words not equally clear and distinct, or by inference or argument from other parts of the will, or by an inaccurate recital of or reference to its contents in another part of the will.

§ 1323. Where the meaning of any part of a will is ambiguous or doubtful, it may be explained by any reference thereto, or recital thereof, in another part of the will.

§ 1324. The words of a will are to be taken in their ordinary and grammatical sense, unless a clear intention to use

them in another sense can be collected, and that other can be ascertained.

§ 1325. The words of a will are to receive an interpretation which will give to every expression some effect, rather than one which will render any of the expressions inoperative.

§ 1326. Of two modes of interpreting a will, that is to be preferred which will prevent a total intestacy.

§ 1327. Technical words in a will are to be taken in their technical sense, unless the context clearly indicates a contrary intention.

§ 1328. Technical words are not necessary to give effect to any species of disposition by a will.

§ 1329. The term "heirs," or other words of inheritance, are not requisite to devise a fee, and a devise of real property passes all the estate of the testator, unless otherwise limited.

§ 1330. Real or personal property embraced in a power to devise passes by a will purporting to devise all the real or personal property of the testator.

§ 1331. A devise or bequest of all the testator's real or personal property, in express terms, or in any other terms denoting his intent to dispose of all his real or personal property, passes all the real or personal property which he was entitled to dispose of by will at the time of his death.

§ 1332. A devise of the residue of the testator's real property passes all the real property which he was entitled to devise at the time of his death, not otherwise effectually devised by his will. [In effect July 1, 1874.]

1333. A bequest of the residue of the testator's personal property passes all the personal property which he was entitled to bequeath at the time of his death, not otherwise actually bequeathed by his will. [In effect July 1, 1874.]

1334. A testamentary disposition to "heirs," "relatives," "nearest relations," "representatives," "legal repre-

representatives," or "personal representatives," or "family," "issue," "descendants," "nearest" or "next of kin" of any person, without other words of qualification, and when the terms are used as words of donation, and not of limitation, vests the property in those who would be entitled to succeed to the property of such person, according to the provisions of the Title on Succession in this Code.

§ 1335. The terms mentioned in the last section are used as words of donation, and not of limitation, when the property is given to the person so designated directly, and not as a qualification of an estate given to the ancestor of such person.

§ 1336. Words in a will referring to death or survivorship, simply, relate to the time of the testator's death, unless possession is actually postponed, when they must be referred to the time of possession.

§ 1337. A testamentary disposition to a class includes every person answering the description at the testator's death; but when the possession is postponed to a future period, it includes also all persons coming within the description before the time to which possession is postponed.

§ 1338. When a will directs the conversion of real property into money, such property and all its proceeds must be deemed personal property from the time of the testator's death.

§ 1339. A child conceived before, but not born until after a testator's death, or any other period when a disposition to a class vests in right or in possession, takes, if answering to the description of the class.

§ 1340. When, applying a will, it is found that there is an imperfect description, or that no person or property exactly answers the description, mistakes and omissions must be corrected, if the error appears from the context of the will or from extrinsic evidence; but evidence of the declarations of the testator as to his intentions cannot be received.

§ 1341. Testamentary dispositions, including devises and bequests to a person on attaining majority, are presumed to vest at the testator's death.

§ 1342. A testamentary disposition, when vested, cannot be divested unless upon the occurrence of the precise contingency prescribed by the testator for that purpose.

§ 1343. If a devisee or legatee dies during the lifetime of the testator, the testamentary disposition to him fails, unless an intention appears to substitute some other in his place, except as provided in section thirteen hundred and ten. [In effect July 1, 1874.]

§ 1344. The death of a devisee or legatee of a limited interest before the testator's death does not defeat the interests of persons in remainder, who survive the testator.

§ 1345. A conditional disposition is one which depends upon the occurrence of some uncertain event, by which it is either to take effect or be defeated.

§ 1346. A condition precedent in a will is one which is required to be fulfilled before a particular disposition takes effect.

§ 1347. Where a testamentary disposition is made upon a condition precedent, nothing vests until the condition is fulfilled, except where such fulfilment is impossible, in which case the disposition vests, unless the condition was the sole motive thereof, and the impossibility was unknown to the testator, or arose from an unavoidable event subsequent to the execution of the will.

§ 1348. A condition precedent in a will is to be deemed performed when the testator's intention has been substantially, though not literally, complied with.

§ 1349. A condition subsequent is where an estate or interest is so given as to vest immediately, subject only to be divested by some subsequent act or event.

§ 1350. A devise or legacy given to more than one person vests in them as owners in common.

§ 1351. Advancements or gifts are not to be taken as adoptions of general legacies, unless such intention is expressed by the testator in writing.

CHAPTER III.

GENERAL PROVISIONS.

SECTION 1357. Nature and designations of legacies

1. Specific ;
 2. Demonstrative ;
 3. Annuities ;
 4. Residuary ;
 5. General.
1358. Order of sale in case of an intestate
1359. Order of sale in case of a testator.
1360. Legacies, how charged with debts.
1361. Same.
1362. Abatement.
1363. Specific devises and legacies.
1364. Heir's conveyance good, unless will is proved within four years.
1365. Possession of legatees.
1366. Bequest of interest.
1367. Satisfaction.
1368. Legacies, when due.
1369. Interest.
1370. Construction of these rules.
1371. Executor according to the tenor
1372. Power to appoint is invalid.
1373. Executor not to act till qualified.
1374. Provisions as to revocations.
1375. Execution and construction of prior wills not affected.
1376. The law of what place applies.
1377. Liability of beneficiaries for testator's obligations.

§ 1357. Legacies are distinguished and designated, according to their nature, as follows :

1. A legacy of a particular thing, specified and distinguished from all others of the same kind belonging to the testator, is specific ; if such legacy fails, resort cannot be had to the other property of the testator ;

2. A legacy is demonstrative when the particular fund or personal property is pointed out from which it is to be taken or paid ; if such fund or property fails, in whole or in part, resort may be had to the general assets, as in case of a general legacy ;

3. An annuity is a bequest of certain specified sums periodically ; if the fund or property out of which they are payable fails, resort may be had to the general assets, as in case of a general legacy ;

4. A residuary legacy embraces only that which remains after all the bequests of the will are discharged ;

5. All other legacies are general legacies.

§ 1358. When a person dies intestate, all his property, real and personal, without any distinction between them, is chargeable with the payment of his debts, except as otherwise provided in this Code and the Code of Civil Procedure. [In effect July 1, 1874.]

Code Civ. Proc. §§ 1464-1486, 1516, 1519, 1562-1563.

§ 1359. The property of a testator, except as otherwise specially provided for in this Code and the Code of Civil Procedure, must be resorted to for the payment of debts, in the following order :

1. The property which is expressly appropriated by the will for the payment of the debts ;

2. Property not disposed of by the will ;

3. Property which is devised or bequeathed to a residuary legatee ;

4. Property which is not specifically devised or bequeathed ;

and

5. All other property ratably. Before any debts are paid, the expenses of the administration and the allowance to the family must be paid or provided for. [In effect July 1, 1874.]

Code Civ. Proc. §§ 1516-1533, 1559-1560 ; Sales of Personal Property, §§ 1622-1653 ; Payment of Legacies, &c., §§ 1658-1669 ; Ib. 1563, 1564.

§ 1360. The property of a testator, except as otherwise specially provided in this Code and the Code of Civil Procedure, must be resorted to for the payment of legacies, in the following order :

1. The property which is expressly appropriated by the will for the payment of the legacies ;

2. Property not disposed of by the will ;

3. Property which is devised or bequeathed to a residuary legatee ;

4. Property which is specifically devised or bequeathed.

[In effect July 1, 1874.]

Code Civ. Proc. § 1559.

1361. Legacies to husband, widow, or kindred of any are chargeable only after legacies to persons not related to the testator.

Code Civ. Proc. § 1559

1362. Abatement takes place in any class only as between legacies of that class, unless a different intention is expressed in the will.

§ 1363. In a specific devise or legacy, the title passes by the will, but possession can only be obtained from the personal representative; and he may be authorized by the Superior Court to sell the property devised and bequeathed, in the cases herein provided. [In effect April 5, 1880.]

§ 1364. The rights of a purchaser or incumbrancer of real property, in good faith and for value, derived from any person claiming the same by succession, are not impaired by any devise made by the decedent from whom succession is claimed, unless the instrument containing such devise is duly proved as a will, and recorded in the office of the clerk of the Superior Court having jurisdiction thereof, or unless written notice of such devise is filed with the clerk of the county where the real property is situated, within four years after the deviser's death. [In effect April 5, 1880.]

Code Civ. Proc. §§ 1814, 1818.

§ 1365. Where specific legacies are for life only, the first legatee must sign and deliver to the second legatee, or, if there is none, to the personal representative, an inventory of the property, expressing that the same is in his custody for life only, and that, on his decease, it is to be delivered and to remain to the use and for the benefit of the second legatee, or to the personal representative, as the case may be.

§ 1366. In case of a bequest of the interest or income of a certain sum or fund, the income accrues from the testator's death.

§ 1367. A legacy, or a gift in contemplation, fear, or peril of death, may be satisfied before death. [In effect July 1, 1874.]

§ 1368. Legacies are due and deliverable at the expiration of one year after the testator's decease. Annuities commence at the testator's decease.

50 Cal. 247.

§ 1369. Legacies bear interest from the time when they are due and payable, except that legacies for maintenance, or to the testator's widow, bear interest from the testator's decease.

50 Cal. 247.

§ 1370. The four preceding sections are in all cases to be controlled by a testator's express intention.

§ 1371. Where it appears, by the terms of a will, that it was the intention of the testator to commit the execution thereof and the administration of his estate to any person as executor, such person, although not named executor, is entitled to letters testamentary in like manner as if he had been named executor.

Code Civ. Proc. §§ 1349, 1353.

§ 1372. An authority to an executor to appoint an executor is void.

Code Civ. Proc. § 1355.

§ 1373. No person has any power, as an executor, until he qualifies, except that, before letters have been issued, he may pay funeral charges and take necessary measures for the preservation of the estate.

Code Civ. Proc. §§ 1349, 1643.

§ 1374. The provisions of this title in relation to the revocation of wills apply to all wills made by any testator living at the expiration of one year from the time it takes effect.

§ 1375. The provisions of this title do not impair the validity of the execution of any will made before it takes effect, or affect the construction of any such will.

§ 1376. The validity and interpretation of wills, wherever made, are governed, when relating to property within this State, by the law of this State. [In effect July 1, 1874.]

§ 1377. Those to whom property is given by will are liable for the obligations of the testator in the cases and to the extent prescribed by the Code of Civil Procedure.

§§ 1270-1377, Civ. Code. See Code Civ. Proc. §§ 1443-1453, 1651.

TITLE VII.

SUCCESSION.

- Section 1383.** Succession defined.
1384. Who first succeeds to possession of estates not devised.
1386. Succession to and distribution of property.
1387. Illegitimate children to inherit in certain events.
1388. The mother is successor to illegitimate child.
- 1389-1393. Degrees of kindred, how computed.
1394. Relatives of the half blood.
1395. Advancements constitute part of distributive share.
1396. Advancements, when too much, or not enough.
1397. What are advancements.
1398. Value of advancements, how determined.
1399. When heir, advanced to, dies before decedent.
1400. Inheritance of husband and wife from each other.
1401. Distribution of the common property on death of wife.
1402. Distribution of common property on death of husband.
1403. Inheritance by representation.
1404. Aliens may inherit, when, and how
1405. Succession not claimed, attorney general to cause to be sold, and proceeds deposited.
1406. When the property and estate escheat to the State.
1407. Property escheated subject to charges as other property.
1408. Successor liable for decedent's obligations.

§ 1383. Succession is the coming in of another to take the property of one who dies without disposing of it by will.
52 Cal. 298.

§ 1384. The property, both real and personal, of one who dies without disposing of it by will, passes to the heirs of the intestate, subject to the control of the probate court, and to the possession of any administrator appointed by that court for the purposes of administration. [In effect July 1, 1874]

Code Civ. Proc. § 1452.

§ 1385 of said Code is repealed. [In effect July 1, 1874.]

§ 1386. When any person having title to any estate not otherwise limited by marriage contract, dies without disposing of the estate by will, it is succeeded to and must be distributed, unless otherwise expressly provided in this Code and the Code of Civil Procedure, subject to the payment of his debts, in the following manner :

1. If the decedent leave a surviving husband or wife, and

only one child, or the lawful issue of one child, in equal shares to the surviving husband, or wife and child, or issue of such child. If the decedent leave a surviving husband or wife, and more than one child living, or one child living, and the lawful issue of one or more deceased children, one third to the surviving husband or wife, and the remainder in equal shares to his children, and to the lawful issue of any deceased child, by right of representation; but if there be no child of the decedent living at his death, the remainder goes to all of his lineal descendants; and if all of the descendants are in the same degree of kindred to the decedent, they share equally, otherwise they take according to the right of representation. If the decedent leave no surviving husband or wife, but leave issue, the whole estate goes to such issue; and if such issue consists of more than one child living, or one child living, and the lawful issue of one or more deceased children, then the estate goes in equal shares to the children living, or to the child living, and the issue of the deceased child or children by right of representation;

2. If the decedent leave no issue, the estate goes one half to the surviving husband or wife, and the other to the decedent's father and mother in equal shares, and if either be dead the whole of said half goes to the other. If there be no father or mother, then one half goes in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation. If the decedent leave no issue, nor husband nor wife, the estate must go to his father and mother in equal shares, or if either be dead then to the other;

3. If there be neither issue, husband, wife, father, nor mother, then in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation;

5. If the decedent leave a surviving husband or wife, and neither issue, father, mother, brother, nor sister, the whole estate goes to the surviving husband or wife;

6. If the decedent leave neither issue, husband, wife, father, mother, brother, nor sister, the estate must go to the next of kin, in equal degree, excepting that when there are two or more collateral kindred, in equal degree, but claiming through different ancestors, those who claimed through the nearest ancestors must be preferred to those claiming through an ancestor more remote;

7. If the decedent leave several children, or one child and

the issue of one or more children, and any such surviving child dies under age, and not having been married, all the estate that came to the deceased child by inheritance from such decedent descends in equal shares to the other children of the same parent, and to the issue of any such other children who are dead, by right of representation;

8. If, at the death of such child, who dies under age, not having been married, all the other children of his parents are also dead, and any of them have left issue, the estate that came to such child by inheritance from his parent descends to the issue of all other children of the same parent; and if all the issue are in the same degree of kindred to the child, they share the estate equally, otherwise they take according to the right of representation;

9. If the decedent be a widow or widower, and leave no kindred, and the estate or any portion thereof was common property of such decedent and his or her deceased spouse, while such a spouse was living, such common property shall go to the father of such deceased spouse, or if he be dead, to the mother. If there be no father nor mother, then such property shall go to the brothers and sisters of such deceased spouse, in equal shares, and to the lawful issue of any deceased brother or sister of such deceased spouse, by right of representation;

10. If the decedent have no husband, wife, or kindred, and there be no heirs to take his estate or any portion thereof, under subdivision nine of this section, the same escheats to the State for the support of common schools. [In effect April 23, 1880.]

Code Civ. Proc. §§ 1452-1453, 1581, 1693, 1264-1272, 1365.

§ 1387. Every illegitimate child is an heir of the person who, in writing, signed in the presence of a competent witness, acknowledges himself to be the father of such child; and in all cases is an heir of his mother; and inherits his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock; but he does not represent his father or mother by inheriting any part of the estate of his or her kindred, either lineal or collateral, unless, before his death, his parents shall have intermarried, and his father, after such marriage, acknowledges him as his child, or adopts him into his family; in which case such child and all the legitimate children are considered brothers and sisters, and on the death of either of them, intestate, and without issue, the others inherit his estate, and are heirs, as hereinbefore provided, in like manner as if all

the children had been legitimate; saving to the father and mother respectively their rights in the estates of all the children in like manner as if all had been legitimate. The issue of all marriages null in law, or dissolved by divorce, are legitimate.

57 Cal. 484.

§ 1388. If an illegitimate child, who has not been acknowledged or adopted by his father, dies intestate, without lawful issue, his estate goes to his mother, or, in case of her decease, to her heirs at law.

§ 1389. The degree of kindred is established by the number of generations, and each generation is called a degree.

§ 1390. The series of degrees forms the line; the series of degrees between persons who descend from one another is called direct or lineal consanguinity; and the series of degrees between persons who do not descend from one another, but spring from a common ancestor, is called the collateral line or collateral consanguinity.

§ 1391. The direct line is divided into a direct line descending and a direct line ascending. The first is that which connects the ancestors with those who descend from him. The second is that which connects a person with those from whom he descends.

§ 1392. In the direct line there are as many degrees as there are generations. Thus, the son is, with regard to the father, in the first degree; the grandson in the second; and *vice versa* with regard to the father and grandfather toward the sons and grandsons.

§ 1393. In the collateral line the degrees are counted by generations, from one of the relations up to the common ancestor, and from the common ancestor to the other relations. In such computation the decedent is excluded, the relative included, and the ancestor counted but once. Thus, brothers are related in the second degree; uncle and nephew in the third degree; cousins german in the fourth, and so on.

§ 1394. Kindred of the half blood inherit equally with those of the whole blood in the same degree, unless the inher-

itance come to the intestate by descent, devise, or gift of some one of his ancestors, in which case all those who are not of the blood of such ancestor must be excluded from such inheritance.

Code Civ. Proc. § 1366.

§ 1395. Any estate, real or personal, given by the decedent in his lifetime as an advancement to any child, or other lineal descendant, is a part of the estate of the decedent for the purposes of division and distribution thereof among his issue, and must be taken by such child, or other lineal descendant, toward his share of the estate of the decedent.

§ 1396. If the amount of such advancement exceeds the share of the heir receiving the same, he must be excluded from any further portion in the division and distribution of the estate, but he must not be required to refund any part of such advancement; and if the amount so received is less than his share, he is entitled to so much more as will give him his full share of the estate of the decedent.

§ 1397. All gifts and grants are made as advancements, if expressed in the gift or grant to be so made, or if charged in writing by the decedent as an advancement, or acknowledged in writing as such, by the child or other successor or heir.

§ 1398. If the value of the estate so advanced is expressed in the conveyance, or in the charge thereof made by the decedent, or in the acknowledgment of the party receiving it, it must be held as of that value in the division and distribution of the estate; otherwise, it must be estimated according to its value when given, as nearly as the same can be ascertained.

§ 1399. If any child, or other lineal descendant receiving advancement, dies before the decedent, leaving issue, the advancement must be taken into consideration in the division and distribution of the estate, and the amount thereof must be allowed accordingly by the representatives of the heirs receiving the advancement, in like manner as if the advancement had been made directly to them.

§ 1400. The provisions of the preceding sections of this

title, as to the inheritance of the husband and wife from each other, apply only to the separate property of the decedents.

§ 1401. Upon the death of the wife, the entire community property, without administration, belongs to the surviving husband, except such portion thereof as may have been set apart to her by judicial decree, for her support and maintenance, which portion is subject to her testamentary disposition, and in the absence of such disposition, goes to her descendants, or heirs, exclusive of her husband. [In effect July 1, 1874.]

§ 1402. Upon the death of the husband, one half of the community property goes to the surviving wife, and the other half is subject to the testamentary disposition of the husband, and in the absence of such disposition, goes to his descendants, equally, if such descendants are in the same degree of kindred to the decedent; otherwise, according to the right of representation; and in the absence of both such disposition and such descendants, is subject to distribution in the same manner as the separate property of the husband. In case of the dissolution of the community by the death of the husband, the entire community property is equally subject to his debts, the family allowance, and the charges and expenses of administration.

§ 1403. Inheritance or succession "by right of representation" takes place when the descendants of any deceased heir take the same share or right in the estate of another person that their parents would have taken if living. Posthumous children are considered as living at the death of their parents.

§ 1404. Resident aliens may take in all cases by succession as citizens; and no person capable of succeeding under the provisions of this title is precluded from such succession by reason of the alienage of any relative; but no non-resident foreigner can take by succession unless he appears and claims such succession within five years after the death of the decedent to whom he claims succession.

§ 1405. When succession is not claimed as provided in the preceding section, the District Court, on information, must direct the attorney general to reduce the property to his or her possession of the State, or to cause the same to be sold,

and the same or the proceeds thereof to be deposited in the state treasury for the benefit of such non-resident foreigner, or his legal representative, to be paid to him whenever, within five years after such deposit, proof to the satisfaction of the state comptroller and treasurer is produced that he is entitled to succeed thereto.

§ 1406. When so claimed, the evidence and the joint order of the comptroller and treasurer must be filed by the treasurer as his voucher, and the property delivered or the proceeds paid to the claimant on filing his receipt therefor. If no one succeeds to the estate or the proceeds, as herein provided, the property of the decedent devolves and escheats to the people of the State, and is placed by the state treasurer to the credit of the school fund.

§ 1407. Real property passing to the State under the last section, whether held by the State or its officers, is subject to the same charges and trusts to which it would have been subject if it had passed by succession, and is also subject to all the provisions of Title VIII., Part III., of the Code of Civil Procedure. [§§ 1269-1272.]

§ 1408. Those who succeed to the property of a decedent are liable for his obligations in the cases and to the extent prescribed by the Code of Civil Procedure. [§§ 1298-1809.]

TITLE VIII.

WATER RIGHTS.

SECTION 1410. Rights to water may be acquired by appropriation

1411. Appropriation must be for a useful purpose.

1412. Point of diversion may be changed.

1418. Water may be turned into natural channels.

1414. First in time, first in right.

1415. Notice of appropriation.

1416. Diligence in appropriating.

1417. Completion defined.

1418. Doctrine of relation applied.

1419. Forfeiture.

1420. Rights of present claimant.

1421. Recorder to keep book in which to record notices.

1422. This title not to affect rights of riparian proprietors.

§ 1410. The right to the use of running water flowing in a river or stream, or down a cañon or ravine, may be acquired by appropriation.

§ 1411. The appropriation must be for some useful or beneficial purpose, and when the appropriator or his successor in interest ceases to use it for such a purpose, the right ceases.

§ 1412. The person entitled to the use may change the place of diversion, if others are not injured by such change, and may extend the ditch, flume, pipe, or aqueduct by which the diversion is made to places beyond that where the first use was made.

§ 1413. The water appropriated may be turned into the channel of another stream and mingled with its water, and then reclaimed ; but in reclaiming it the water already appropriated by another must not be diminished.

§ 1414. As between appropriators, the one first in time is the first in right.

§ 1415. A person desiring to appropriate water must post a notice, in writing, in a conspicuous place at the point of intended diversion, stating therein :

1. That he claims the water there flowing to the extent of (giving the number) inches, measured under a four-inch pressure ;

2. The purposes for which he claims it, and the place of intended use ;

3. The means by which he intends to divert it, and the size of the flume, ditch, pipe, or aqueduct in which he intends to divert it ;

A copy of the notice must, within ten days after it is posted, be recorded in the office of the recorder of the county in which it is posted.

§ 1416. Within sixty days after the notice is posted, the claimant must commence the excavation or construction of the works in which he intends to divert the water, and must prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted by snow or rain.

§ 1417. By "completion" is meant conducting the waters to the place of intended use.

§ 1418. By a compliance with the above rules the claimant's right to the use of the water relates back to the time the notice was posted.

§ 1419. A failure to comply with such rules deprives the claimants of the right to the use of the water as against a subsequent claimant who complies therewith.

§ 1420. Persons who have heretofore claimed the right to water, and who have not constructed works in which to divert it, and who have not diverted nor applied it to some useful purpose, must, after this title takes effect, and within twenty days thereafter, proceed as in this title provided, or their right ceases.

§ 1421. The recorder of each county must keep a book, in which he must record the notices provided for in this title.

87 § 1422. The rights of riparian proprietors are not affected by the provisions of this title.

See Act of April 1, 1872, To provide Irrigation, Appendix, p. 474

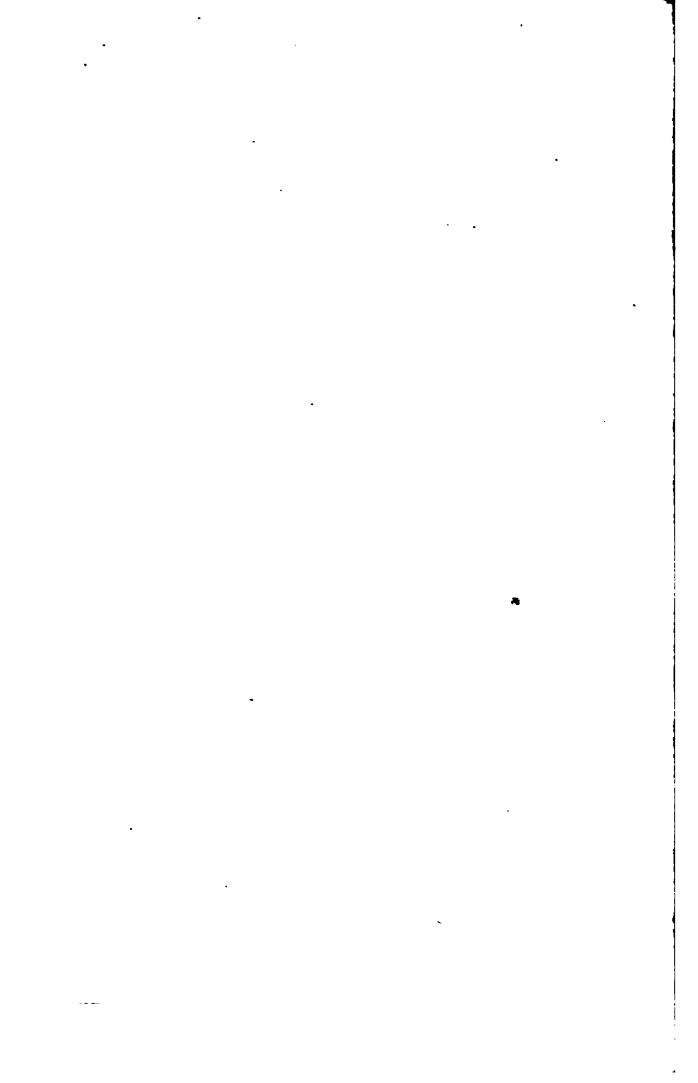
DIVISION THIRD.

**PART I. OBLIGATIONS IN GENERAL, §§
1427-1543.**

II. CONTRACTS, §§ 1549-1701.

**III. OBLIGATIONS IMPOSED BY LAW,
§§ 1708-1715.**

**IV. OBLIGATIONS ARISING FROM
PARTICULAR TRANSACTIONS,
§§ 1721-3268.**



PART I.

OBLIGATIONS IN GENERAL.

- TITLE I. DEFINITION OF OBLIGATIONS, §§ 1427-1428.**
II. INTERPRETATION OF OBLIGATIONS, §§ 1429-1451.
III. TRANSFER OF OBLIGATIONS, §§ 1457-1467.
IV. EXTINCTION OF OBLIGATIONS, §§ 1473-1543.

TITLE I.

DEFINITION OF OBLIGATIONS.

- SECTION 1427.** Obligation, what.
1428. How created and enforced.

§ 1427. An obligation is a legal duty, by which a person is bound to do or not to do a certain thing.

§ 1428. An obligation arises either from :

1. The contract of the parties ; or,
2. The operation of law.

An obligation arising from operation of law may be enforced in the manner provided by law, or by civil action or proceeding. [In effect July 1, 1874.]

56 Cal. 218.

TITLE II.

INTERPRETATION OF OBLIGATIONS

- CHAPTER I. GENERAL RULES OF INTERPRETATION, § 1429.**
II. JOINT OR SEVERAL OBLIGATIONS, §§ 1430-1432.
III. CONDITIONAL OBLIGATIONS, §§ 1434-1442.
IV. ALTERNATIVE OBLIGATIONS, §§ 1448-1451.

performing or offering to perform any conditions upon his part in favor of the former party.

§ 1441. A condition in a contract, the fulfilment of which is impossible or unlawful, within the meaning of the Article on the Object of Contracts, or which is repugnant to the nature of the interest created by the contract, is void.

§ 1442. A condition involving a forfeiture must be strictly interpreted against the party for whose benefit it is created.

CHAPTER IV.

ALTERNATIVE OBLIGATIONS.

SECTION 1448. Who has the right of selection.

1449. Right of selection, how lost.

1450. Alternatives indivisible.

1451. Nullity of one or more of alternative obligations.

§ 1448. If an obligation requires the performance of one of two acts in the alternative, the party required to perform has the right of selection, unless it is otherwise provided by the terms of the obligation.

§ 1449. If the party having the right of selection between alternative acts does not give notice of his selection to the other party within the time, if any, fixed by the obligation for that purpose, or, if none is so fixed, before the time at which the obligation ought to be performed, the right of selection passes to the other party.

§ 1450. The party having the right of selection between alternative acts must select one of them in its entirety, and cannot select part of one and part of another without the consent of the other party.

§ 1451. If one of the alternative acts required by an obligation is such as the law will not enforce, or becomes unlawful or impossible of performance, the obligation is to be interpreted as though the other stood alone.

TITLE III.

TRANSFER OF OBLIGATIONS.

SECTION 1457. Burden of obligation not transferable.

1458. Rights arising out of obligation transferable.

1459. Non-negotiable instruments may be transferred.

1460. Covenants running with land, what.

1461. What covenants run with land.

1462. Same.

1463. Same.

1464. What covenants run with land when assigns are named.

1465. Who are bound by covenants.

1466. Who are not.

1467. Apportionment of covenants.

§ 1457. The burden of an obligation may be transferred with the consent of the party entitled to its benefit, but not otherwise, except as provided by section 1466.

§ 1458. A right arising out of an obligation is the property of the person to whom it is due, and may be transferred as such.

§ 1459. A non-negotiable written contract for the payment of money or personal property may be transferred by indorsement, in like manner with negotiable instruments. Such indorsement shall transfer all the rights of the assignor under the instrument to the assignee, subject to all equities and defences existing in favor of the maker at the time of the indorsement.

55 Cal. 129; 57 Cal. 304.

§ 1460. Certain covenants, contained in grants of estates in real property, are appurtenant to such estates, and pass with them, so as to bind the assigns of the covenantor and to vest in the assigns of the covenantee, in the same manner as if they had personally entered into them. Such covenants are said to run with the land.

§ 1461. The only covenants which run with the land are those specified in this title, and those which are incidental thereto.

§ 1462. Every covenant contained in a grant of an estate

in real property, which is made for the direct benefit of the property, or some part of it then in existence, runs with the land.

§ 1463. The last section includes covenants "of warranty," "for quiet enjoyment," or for further assurance on the part of a grantor, and covenants for the payment of rent, or of taxes or assessments upon the land, on the part of a grantee.

§ 1464. A covenant for the addition of some new thing to real property, or for the direct benefit of some part of the property not then in existence or annexed thereto, when contained in a grant of an estate in such property, and made by the covenantor expressly for his assigns or to the assigns of the covenantee, runs with land so far only as the assigns thus mentioned are concerned.

§ 1465. A covenant running with the land binds those only who acquire the whole estate of the covenantor in some part of the property.

§ 1466. No one, merely by reason of having acquired an estate subject to a covenant running with the land, is liable for a breach of the covenant before he acquired the estate, or after he has parted with it or ceased to enjoy its benefits.

§ 1467. Where several persons, holding by several titles, are subject to the burden or entitled to the benefit of a covenant running with the land, it must be apportioned among them according to the value of the property subject to it held by them respectively, if such value can be ascertained, and if not, then according to their respective interests in point of quantity.

TITLE IV.

EXTINCTION OF OBLIGATIONS.

CHAPTER I. PERFORMANCE, §§ 1473-1479.

II. OFFER OF PERFORMANCE, §§ 1485-1505.

III. PREVENTION OF PERFORMANCE OR OFFER, §§ 1511-1515.

IV. ACCORD AND SATISFACTION, §§ 1521-1524.

V. NOVATION, §§ 1530-1533.

VI. RELEASE, §§ 1541-1543.

CHAPTER I.

PERFORMANCE.

SECTION 1473. Obligation extinguished by performance.

1474. Performance by one of several joint debtors.

1475. Performance to one of joint creditors.

1476. Effect of directions by creditors.

1477. Partial performance.

1478. Payment, what.

1479. Application of general performance.

§ 1473. Full performance of an obligation, by the party whose duty it is to perform it, or by any other person on his behalf, and with his assent, if accepted by the creditor, extinguishes it.

§ 1474. Performance of an obligation, by one of several persons who are jointly liable under it, extinguishes the liability of all.

§ 1475. An obligation in favor of several persons is extinguished by performance rendered to any of them, except the case of a deposit made by owners in common, or in ownership, which is regulated by the Title on Deposit.

1476. If a creditor, or any one of two or more joint debtors, at any time directs the debtor to perform his obligation in a particular manner, the obligation is extinguished by

performance in that manner, even though the creditor does not receive the benefit of such performance.

§ 1477. A partial performance of an indivisible obligation extinguishes a corresponding proportion thereof, if the benefit of such performance is voluntarily retained by the creditor, but not otherwise. If such partial performance is of such a nature that the creditor cannot avoid retaining it without injuring his own property, his retention thereof is not presumed to be voluntary.

§ 1478. Performance of an obligation for the delivery of money only is called payment.

§ 1479. Where a debtor, under several obligations to another, does an act, by way of performance, in whole or in part, which is equally applicable to two or more of such obligations, such performance must be applied as follows :

1. If, at the time of performance, the intention or desire of the debtor that such performance should be applied to the extinction of any particular obligation, be manifested to the creditor, it must be so applied ;

2. If no such application be then made, the creditor, within a reasonable time after such performance, may apply it toward the extinction of any obligation, performance of which was due to him from the debtor at the time of such performance ; except that if similar obligations were due to him, both individually and as a trustee, he must, unless otherwise directed by the debtor, apply the performance to the extinction of all such obligations in equal proportion ; and an application once made by the creditor cannot be rescinded without the consent of [the] debtor ;

3. If neither party makes such application within the time prescribed herein, the performance must be applied to the extinction of obligations in the following order ; and, if there be more than one obligation of a particular class, to the extinction of all in that class, ratably :

- (1.) Of interest due at the time of the performance ;
- (2.) Of principal due at that time ;
- (3.) Of the obligation earliest in date of maturity ;
- (4.) Of an obligation not secured by a lien or collateral undertaking ;
- (5.) Of an obligation secured by a lien or collateral undertaking. [In effect July 1, 1874.]

CHAPTER II.

OFFER OF PERFORMANCE.

SECTION 1485. Obligation extinguished by offer of performance.

1486. Offer of partial performance.

1487. By whom to be made.

1488. To whom to be made.

1489. Where offer may be made.

1490. When offer must be made.

1491. Same.

1492. Compensation after delay in performance.

1493. Offer to be made in good faith.

1494. Conditional offer.

1495. Ability and willingness essential.

1496. Production of thing to be delivered not necessary.

1497. Thing offered to be kept separate.

1498. Performance of condition precedent.

1499. Written receipts.

1500. Extinction of pecuniary obligation.

1501. Objections to mode of offer.

1502. Title to thing offered.

1503. Custody of thing offered.

1504. Effect of offer on accessories of obligation.

1505. Creditor's retention of thing which he refuses to accept.

§ 1485. An obligation is extinguished by an offer of performance, made in conformity to the rules herein prescribed, and with intent to extinguish the obligation.

§ 1486. An offer of partial performance is of no effect.

§ 1487. An offer of performance must be made by the debtor, or by some person on his behalf and with his assent.

§ 1488. An offer of performance must be made to the creditor, or to any one of two or more joint creditors, or to a person authorized by one or more of them to receive or collect what is due under the obligation, if such creditor or author-
person is present at the place where the offer may be made ;
if not, wherever the creditor may be found. [In effect
1, 1874.]

§ 1489. In the absence of an express provision to the con-
trary, an offer of performance may be made, at the option of
debtor :

At any place appointed by the creditor ; or,

2. Wherever the person to whom the offer ought to be made can be found; or,

3. If such person cannot, with reasonable diligence, be found within this State, and within a reasonable distance from his residence or place of business, or if he evades the debtor, then at his residence or place of business, if the same can, with reasonable diligence, be found within the State; or,

4. If this cannot be done, then at any place within this State.

§ 1490. Where an obligation fixes a time for its performance, an offer of performance must be made at that time, within reasonable hours, and not before nor afterwards.

§ 1491. Where an obligation does not fix the time for its performance, an offer of performance may be made at any time before the debtor, upon a reasonable demand, has refused to perform.

§ 1492. Where delay in performance is capable of exact and entire compensation, and time has not been expressly declared to be of the essence of the obligation, an offer of performance, accompanied with an offer of such compensation, may be made at any time after it is due, but without prejudice to any rights acquired by the creditor, or by any other person, in the mean time.

§ 1493. An offer of performance must be made in good faith, and in such manner as is most likely, under the circumstances, to benefit the creditor.

§ 1494. An offer of performance must be free from any conditions which the creditor is not bound, on his part, to perform.

§ 1495. An offer of performance is of no effect if the person making it is not able and willing to perform according to the offer.

§ 1496. The thing to be delivered, if any, need not in any case be actually produced, upon an offer of performance unless the offer is accepted.

§ 1497. A thing, when offered by way of performance

must not be mixed with other things from which it cannot be separated immediately and without difficulty.

§ 1498. When a debtor is entitled to the performance of a condition precedent to, or concurrent with, the performance on his part, he may make his offer to depend upon the performance of such condition.

49 Cal. 25.

§ 1499. A debtor has a right to require from his creditor a written receipt for any property delivered in performance on his obligation.

49 Cal. 25.

§ 1500. An obligation for the payment of money is extinguished by a due offer of payment, if the amount is immediately deposited in the name of the creditor, with some bank of deposit within this State, of good repute, and notice thereof is given to the creditor.

§ 1501. All objections to the mode of an offer of performance, which the creditor has an opportunity to state at the time to the person making the offer, and which could be then obviated by him, are waived by the creditor, if not then stated.

§ 1502. The title to a thing duly offered in performance of an obligation passes to the creditor, if the debtor at the time signifies his intention to that effect.

§ 1503. The person offering a thing, other than money, by way of performance, must, if he means to treat it as belonging to the creditor, retain it as a depositary for hire, until the creditor accepts it, or until he has given reasonable notice to the creditor that he will retain it no longer, and, if with reasonable diligence he can find a suitable depositary therefor, if he has deposited it with such person.

1504. An offer of payment or other performance, duly made, though the title to the thing offered be not transferred to the creditor, stops the running of interest on the obligation, and has the same effect upon all its incidents as a performance thereof.

§ 1505. If anything is given to a creditor by way of performance, which he refuses to accept as such, he is not bound to return it without demand ; but if he retains it, he is a gratuitous depositary thereof.

Costs when tender is made before suit brought. Code Civ. Proc. 1030.

CHAPTER III.

PREVENTION OF PERFORMANCE OR OFFER.

SECTION 1511. What excuses performance, &c.

1512. Effect of prevention of performance.

1513. Same. (Repealed.)

1514. Same.

1515. Effect of refusal to accept performance before offer.

§ 1511. The want of performance of an obligation, or of an offer of performance, in whole or in part, or any delay therein, is excused by the following causes, to the extent to which they operate :

1. When such performance or offer is prevented or delayed by the act of the creditor, or by the operation of law, even though there may have been a stipulation that this shall not be an excuse ;

2. When it is prevented or delayed by an irresistible, super-human cause, or by the act of public enemies of this State or of the United States, unless the parties have expressly agreed to the contrary ; or,

3. When the debtor is induced not to make it, by any act of the creditor intended or naturally tending to have that effect, done at or before the time at which such performance or offer may be made, and not rescinded before that time

§ 1512. If the performance of an obligation be prevented by the creditor, the debtor is entitled to all the benefits which he would have obtained if it had been performed by both parties. [In effect July 1, 1874.]

§ 1513 of said Code is repealed. [In effect July 1, 1874.]

§ 1514. If performance of an obligation is prevented by any cause excusing performance, other than the act of the creditor, the debtor is entitled to a ratable proportion of the

consideration to which he would have been entitled upon full performance, according to the benefit which the creditor receives from the actual performance.

§ 1515. A refusal by a creditor to accept performance, made before an offer thereof, is equivalent to an offer and refusal, unless, before performance is actually due, he gives notice to the debtor of his willingness to accept it.

CHAPTER IV.

ACCORD AND SATISFACTION.

SECTION 1521. Accord, what.

1522. Effect of accord.

1523. Satisfaction, what.

1524. Accord of liquidated debt.

§ 1521. An accord is an agreement to accept, in extinction of an obligation, something different from or less than that to which the person agreeing to accept is entitled. [In effect July 1, 1874.]

§ 1522. Though the parties to an accord are bound to execute it, yet it does not extinguish the obligation until it is fully executed.

56 Cal. 495.

§ 1523. Acceptance, by the creditor, of the consideration of an accord extinguishes the obligation, and is called satisfaction.

56 Cal. 495.

§ 1524. Part performance of an obligation, either before or after a breach thereof, when expressly accepted by the creditor in writing, in satisfaction, or rendered in pursuance of an agreement in writing, for that purpose, though without new consideration, extinguishes the obligation. [In effect

July 1, 1874.]

Cal. 495.

CHAPTER V.**NOVATION.**

- SECTION 1530.** Novation, what.
1531. Modes of novation.
1532. Novation a contract.
1533. Rescission of novation.

§ 1530. Novation is the substitution of a new obligation for an existing one.

49 Cal. 50.

§ 1531. Novation is made :

1. By the substitution of a new obligation between the same parties, with intent to extinguish the old obligation ;
2. By the substitution of a new debtor in place of the old one, with intent to release the latter ; or,
3. By the substitution of a new creditor in place of the old one, with intent to transfer the rights of the latter to the former.

§ 1532. Novation is made by contract, and is subject to all the rules concerning contracts in general.

54 Cal. 338.

§ 1533. When the obligation of a third person, or an order upon such person, is accepted in satisfaction, the creditor may rescind such acceptance if the debtor prevents such person from complying with the order, or from fulfilling the obligation ; or if, at the time the obligation or order is received, such person is insolvent, and this fact is unknown to the creditor ; or if, before the creditor can with reasonable diligence present the order to the person upon whom it is given, he becomes insolvent. [In effect July 1, 1874.]

CHAPTER VI.

RELEASE.

Section 1541. Obligation extinguished by release.

1542. Certain claims not affected by general release.

1543. Release of several joint debtors.

§ 1541. An obligation is extinguished by a release therefrom given to the debtor by the creditor, upon a new consideration, or in writing, with or without new consideration.

57 Cal. 49.

§ 1542. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor. [In effect July 1, 1874.]

§ 1543. A release of one of two or more joint debtors does not extinguish the obligations of any of the others, unless they are mere guarantors; nor does it affect their right to contribution from him.

PART II.

CONTRACTS.

- TITLE I. NATURE OF A CONTRACT, §§ 1549-1615.**
- II. MANNER OF CREATING CONTRACTS, §§ 1619-1629**
- III. INTERPRETATION OF CONTRACTS, §§ 1635-1661.**
- IV. UNLAWFUL CONTRACTS, §§ 1667-1676.**
- V. EXTINCTION OF CONTRACTS, §§ 1682-1701.**

TITLE I

NATURE OF A CONTRACT.

- CHAPTER I. DEFINITION, §§ 1549-1550.**
- II. PARTIES, §§ 1556-1559.**
- III. CONSENT, §§ 1565-1589.**
- IV. OBJECT, §§ 1595-1599.**
- V. CONSIDERATION, §§ 1605-1615.**

CHAPTER I.

DEFINITION.

- SECTION 1549. Contract, what.**
- 1550. Essential elements of contract.**

§ 1549. A CONTRACT is an agreement to do or not to do a certain thing.

§ 1550. It is essential to the existence of a contract that there should be :

1. Parties capable of contracting ;
2. Their consent ;
3. A lawful object ; and,
4. A sufficient cause or consideration.

CHAPTER II.

PARTIES.

SECTION 1556. Who may contract.

1557. Minors, &c.

1558. Identification of parties necessary.

1559. When contract for benefit of third person may be enforced.

§ 1556. All persons are capable of contracting, except minors, persons of unsound mind, and persons deprived of civil rights.

§ 1557. Minors and persons of unsound mind have only such capacity as is defined by Part I. of Division I. of this Code.

§ 1558. It is essential to the validity of a contract, not only that the parties should exist, but that it should be possible to identify them.

§ 1559. A contract, made expressly for the benefit of a third person may be enforced by him at any time before the parties thereto rescind it.

CHAPTER III.

CONSENT.

SECTION 1565. Essentials of consent.

1566. Consent, when voidable.

1567. Apparent consent, when not free.

1568. When deemed to have been obtained by fraud, &c.

1569. Duress, what.

1570. Menace, what.

1571. Fraud, actual or constructive.

1572. Actual fraud, what.

1573. Constructive fraud.

1574. Actual fraud a question of fact.

1575. Undue influence, what.

1576. Mistake, what.

1577. Mistake of fact.

1578. Mistake of law.

1579. Mistake of foreign laws.

1580. Mutuality of consent.

1581. Communication of consent.

Section 1582. Mode of communicating acceptance of proposal.

1583. When communication deemed complete.

1584. Acceptance by performance of conditions.

1585. Acceptance must be absolute.

1586. Revocation of proposal.

1587. Revocation, how made.

1588. Ratification of contract, void for want of consent.

1589. Assumption of obligation by acceptance of benefits.

§ 1565. The consent of the parties to a contract must be:

1. Free ;
2. Mutual ; and,
3. Communicated by each to the other.

§ 1566. A consent which is not free is nevertheless not absolutely void, but may be rescinded by the parties, in the manner prescribed by the Chapter on Rescission.

§ 1567. An apparent consent is not real or free when obtained through :

1. Duress ;
2. Menace ;
3. Fraud ;
4. Undue influence ; or,
5. Mistake.

§ 1568. Consent is deemed to have been obtained through one of the causes mentioned in the last section only when it would not have been given had such cause not existed.

§ 1569. Duress consists in :

1. Unlawful confinement of the person of the party, or of the husband or wife of such party, or of an ancestor, descendant, or adopted child of such party, husband, or wife ;
2. Unlawful detention of the property of any such person ; or,
3. Confinement of such person, lawful in form, but fraudulently obtained, or fraudulently made unjustly harassing or oppressive.

§ 1570. Menace consists in a threat :

1. Of such duress as is specified in subdivisions 1 and 3 of the last section ;
2. Of unlawful and violent injury to the person or property of any such person as is specified in the last section ; or,
3. Of injury to the character of any such person.

§ 1571. Fraud is either actual or constructive.

§ 1572. Actual fraud, within the meaning of this chapter, consists in any of the following acts, committed by a party to the contract, or with his connivance, with intent to deceive another party thereto, or to induce him to enter into the contract :

1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true ;

2. The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true ;

3. The suppression of that which is true, by one having knowledge or belief of the fact ;

4. A promise made without any intention of performing it :
or,

5. Any other act fitted to deceive.

Fraudulent conveyance a misdemeanor. Penal Code, § 581.

56 Cal. 365.

§ 1573. Constructive fraud consists :

1. In any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him ; or,

2. In any such act or omission as the law specially declares to be fraudulent, without respect to actual fraud.

56 Cal. 365.

§ 1574. Actual fraud is always a question of fact.

§ 1575. Undue influence consists :

1. In the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him ;

2. In taking an unfair advantage of another's weakness of mind ; or,

3. In taking a grossly oppressive and unfair advantage of another's necessities or distress.

11. 89.

576. Mistake may be either of fact or law.

577. Mistake of fact is a mistake, not caused by the existence of a legal duty on the part of the person making the mistake, and consisting in :

1. An unconscious ignorance or forgetfulness of a fact past or present, material to the contract; or,

2. Belief in the present existence of a thing material to the contract, which does not exist, or in the past existence of such a thing, which has not existed.

§ 1578. Mistake of law constitutes a mistake, within the meaning of this article, only when it arises from :

1. A misapprehension of the law by all parties, all supposing that they knew and understood it, and all making substantially the same mistake as to the law ; or,

2. A misapprehension of the law by one party, of which the others are aware at the time of contracting, but which they do not rectify.

§ 1579. Mistake of foreign laws is a mistake of fact.

§ 1580. Consent is not mutual, unless the parties all agree upon the same thing in the same sense. But in certain cases defined by the Chapter on Interpretation, they are to be deemed so to agree without regard to the fact.

§ 1581. Consent can be communicated with effect only by some act or omission of the party contracting, by which he intends to communicate it, or which necessarily tends to such communication.

§ 1582. If a proposal prescribes any conditions concerning the communication of its acceptance, the proposer is not bound unless they are conformed to ; but in other cases any reasonable and usual mode may be adopted.

§ 1583. Consent is deemed to be fully communicated between the parties as soon as the party accepting a proposal has put his acceptance in the course of transmission to the proposer, in conformity to the last section.

§ 1584. Performance of the conditions of a proposal, or the acceptance of the consideration offered with a proposal, is an acceptance of the proposal.

§ 1585. An acceptance must be absolute and unqualified, or must include in itself an acceptance of that character which the proposer can separate from the rest, and which will

conclude the person accepting. A qualified acceptance is a new proposal.

§ 1586. A proposal may be revoked at any time before its acceptance is communicated to the proposer, but not afterwards.

§ 1587. A proposal is revoked :

1. By the communication of notice of revocation by the proposer to the other party, in the manner prescribed by sections 1581 and 1583, before his acceptance has been communicated to the former ;
2. By the lapse of the time prescribed in such proposal for its acceptance, or if no time is so prescribed, the lapse of a reasonable time without communication of the acceptance.
3. By the failure of the acceptor to fulfil a condition precedent to acceptance ; or,
4. By the death or insanity of the proposer.

§ 1588. A contract which is voidable solely for want of due consent may be ratified by a subsequent consent.

§ 1589. A voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it, so far as the facts are known, or ought to be known, to the person accepting.

CHAPTER IV.

OBJECT OF A CONTRACT.

SECTION 1595. Object, what.

1596. Requisites of object.

1597. Impossibility, what.

1598. When contract wholly void.

1599. When contract partially void.

§ 1595. The object of a contract is the thing which it is intended, on the part of the party receiving the consideration, to or not to do.

§ 1596. The object of a contract must be lawful when the contract is made, and possible and ascertainable by the time the contract is to be performed.

§ 1597. Everything is deemed possible except that which is impossible in the nature of things.

§ 1598. Where a contract has but a single object, and such object is unlawful, whether in whole or in part, or wholly impossible of performance, or so vaguely expressed as to be wholly unascertainable, the entire contract is void.

§ 1599. Where a contract has several distinct objects, of which one at least is lawful, and one at least is unlawful, in whole or in part, the contract is void as to the latter and valid as to the rest.

CHAPTER V.

CONSIDERATION.

SECTION 1605. Good consideration, what.

1606. How far legal or moral obligation is a good consideration.

1607. Consideration lawful.

1608. Effect of illegality.

1609. Consideration executed or executory.

1610. Executory consideration.

1611. How ascertained.

1612. Effect of impossibility of ascertaining consideration.

1613. Same.

1614. Written instrument presumptive evidence of consideration.

1615. Burden of proof to invalidate sufficient consideration.

§ 1605. Any benefit conferred, or agreed to be conferred, upon the promisor, by any other person, to which the promisor is not lawfully entitled, or any prejudice suffered, or agreed to be suffered, by such person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promisor, is a good consideration for a promise.

§ 1606. An existing legal obligation resting upon the promisor, or a moral obligation originating in some benefit conferred upon the promisor, or prejudice suffered by the promisee, is also a good consideration for a promise, to an extent corresponding with the extent of the obligation, but no further or otherwise.

§ 1607. The consideration of a contract must be lawful within the meaning of section 1667.

§ 1608. If any part of a single consideration for one or more objects, or of several considerations for a single object, is unlawful, the entire contract is void.

§ 1609. A consideration may be executed or executory, in whole or in part. In so far as it is executory it is subject to the provisions of Chapter IV. of this title.

§ 1610. When a consideration is executory, it is not indispensable that the contract should specify its amount or the means of ascertaining it. It may be left to the decision of a third person, or regulated by any specified standard.

§ 1611. When a contract does not determine the amount of the consideration, nor the method by which it is to be ascertained, or when it leaves the amount thereof to the discretion of an interested party, the consideration must be so much money as the object of the contract is reasonably worth.

§ 1612. Where a contract provides an exclusive method by which its consideration is to be ascertained, which method is on its face impossible of execution, the entire contract is void.

§ 1613. Where a contract provides an exclusive method by which its consideration is to be ascertained, which method appears possible on its face, but in fact is, or becomes impossible of execution, such provision only is void.

§ 1614. A written instrument is presumptive evidence of a consideration.

§ 1615. The burden of showing a want of consideration sufficient to support an instrument lies with the party seeking to invalidate or avoid it.

TITLE II

MANNER OF CREATING CONTRACTS.

SECTION 1619. Contracts, express or implied.

1620. Express contract, what.

1621. Implied contract, what.

1622. What contracts may be oral.

1623. Contract not in writing through fraud, may be enforced against fraudulent party.

1624. What contracts must be written.

1625. Effect of writing.

1626. Contract in writing, takes effect when.

1627. Provisions of chapter on transfers of real property.

1628. Corporate seal, how affixed.

1629. Provisions abolishing seals made applicable.

§ 1619. A contract is either express or implied.

§ 1620. An express contract is one, the terms of which are stated in words.

§ 1621. An implied contract is one, the existence and terms of which are manifested by conduct.

§ 1622. All contracts may be oral, except such as are specially required by statute to be in writing.

§ 1623. Where a contract, which is required by law to be in writing, is prevented from being put into writing by the fraud of a party thereto, any other party who is by such fraud led to believe that it is in writing, and acts upon such belief to his prejudice, may enforce it against the fraudulent party.

Code Civ. Proc. §§ 1971-1974.

§ 1624. The following contracts are invalid, unless the same, or some note or memorandum thereof, be in writing and subscribed by the party to be charged, or by his agent :

1. An agreement that by its terms is not to be performed within a year from the making thereof ;

2. A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in section twenty-seven hundred and ninety-four of this Code ;

3. An agreement made upon consideration of marriage other than a mutual promise to marry ;

MI MANNER OF CREATING CONTRACTS. §§ 1625-1629

4. An agreement for the sale of goods, chattels, or things in action, at a price not less than two hundred dollars, unless the buyer accept or receive part of such goods and chattels, or the evidences, or some of them, of such things in action, or pay at the time some part of the purchase-money; but when a sale is made at auction, an entry by the auctioneer in his sale book, at the time of the sale, of the kind of property sold, the terms of the sale, the price, and the names of the purchaser and person on whose account the sale is made, is a sufficient memorandum;

5. An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent be in writing, subscribed by the party sought to be charged;

6. An agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or a commission. [In effect May 8, 1878.]

Code Civ. Proc. §§ 1971-1974.

§ 1625. The execution of a contract in writing, whether the law requires it to be written or not, supersedes all the oral negotiations or stipulations concerning its matter which preceded or accompanied the execution of the instrument.

Code Civ. Proc. §§ 1971-1974.

§ 1626. A contract in writing takes effect upon its delivery to the party in whose favor it is made, or to his agent.

§ 1627. The provisions of the Chapter on Transfers in General, concerning the delivery of grants, absolute and conditional, apply to all written contracts.

§ 1628. A corporate or official seal may be affixed to an instrument by a mere impression upon the paper or other material on which such instrument is written.

§ 1629. All distinctions between sealed and unsealed instruments are abolished.

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TITLE III.

INTERPRETATION OF CONTRACTS.

- SECTION** 1635. Uniformity of interpretation.
 1636. Contracts, how to be interpreted.
 1637. Intention of parties, how ascertained.
 1638. Intention to be ascertained from language.
 1639. Interpretation of written contracts.
 1640. Writing, when disregarded.
 1641. Effect to be given to every part of contract.
 1642. Several contracts, when taken together.
 1643. Interpretation in favor of contract.
 1644. Words to be understood in usual sense.
 1645. Technical words.
 1646. Law of place.
 1647. Contracts explained by circumstances.
 1648. Contract restricted to its evident object.
 1649. Interpretation in sense in which promisor believed promisee to rely.
 1650. Particular clause subordinate to general intent.
 1651. Contract, partly written and partly printed.
 1652. Repugnancies, how reconciled.
 1653. Inconsistent words rejected.
 1654. Words to be taken most strongly against whom.
 1655. Reasonable stipulations, when implied.
 1656. Necessary incidents implied.
 1657. Time of performance of contract.
 1658. Time, when of essence. (Repealed.)
 1659. When joint and several.
 1660. Same.
 1661. Executed and executory contracts, what.

§ 1635. All contracts, whether public or private, are to be interpreted by the same rules, except as otherwise provided by this Code.

§ 1636. A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful.
 57 Cal. 479.

§ 1637. For the purpose of ascertaining the intention of the parties to a contract, if otherwise doubtful, the rules given in this chapter are to be applied.

§ 1638. The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.

§ 1639. When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible; subject, however, to the other provisions of this title.

§ 1640. When, through fraud, mistake, or accident, a written contract fails to express the real intention of the parties, such intention is to be regarded, and the erroneous parts of the writing disregarded.

§ 1641. The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other.

§ 1642. Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together.

§ 1643. A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done without violating the intention of the parties.

§ 1644. The words of a contract are to be understood in their ordinary and popular sense, rather than according to their strict legal meaning; unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed.

57 Cal. 479.

§ 1645. Technical words are to be interpreted as usually understood by persons in the profession or business to which they relate, unless clearly used in a different sense.

57 Cal. 479.

§ 1646. A contract is to be interpreted according to the law and usage of the place where it is to be performed; or, if it does not indicate a place of performance, according to the law and usage of the place where it is made.

57 Cal. 479.

§ 1647. A contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates.

§ 1648. However broad may be the terms of a contract, it extends only to those things concerning which it appears that the parties intended to contract.

§ 1649. If the terms of a promise are in any respect ambiguous or uncertain, it must be interpreted in the sense in which the promisor believed, at the time of making it, that the promisee understood it.

Code Civil Proc. § 1864.

§ 1650. Particular clauses of a contract are subordinate to its general intent.

54 Cal. 370.

§ 1651. Where a contract is partly written and partly printed, or where part of it is written or printed under the special directions of the parties, and with a special view to their intention, and the remainder is copied from a form originally prepared without special reference to the particular parties and the particular contract in question, the written parts control the printed parts, and the parts which are purely original control those which are copied from a form. And if the two are absolutely repugnant, the latter must be so far disregarded.

§ 1652. Repugnancy in a contract must be reconciled, if possible, by such an interpretation as will give some effect to the repugnant clauses, subordinate to the general intent and purpose of the whole contract.

§ 1653. Words in a contract which are wholly inconsistent with its nature, or with the main intention of the parties, are to be rejected.

§ 1654. In cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist. The promisor is presumed to be such party; except in a contract between a public officer or body, as such, and a private party, in which it is presumed that all uncertainty was caused by the private party.

§ 1655. Stipulations which are necessary to make a contract reasonable, or conformable to usage, are implied, in respect to matters concerning which the contract manifests no contrary intention.

§ 1656. All things that in law or usage are considered as incidental to a contract, or as necessary to carry it into effect,

are implied therefrom, unless some of them are expressly mentioned therein, when all other things of the same class are deemed to be excluded.

§ 1657. If no time is specified for the performance of an act required to be performed, a reasonable time is allowed. If the act is in its nature capable of being done instantly, — as, for example, if it consists in the payment of money only, — it must be performed immediately upon the thing to be done being exactly ascertained.

§ 1658 of said Code is repealed. [In effect July 1, 1874.]

§ 1659. Where all the parties who unite in a promise receive some benefit from the consideration, whether past or present, their promise is presumed to be joint and several.

§ 1660. A promise, made in the singular number, but executed by several persons, is presumed to be joint and several.

§ 1661. An executed contract is one, the object of which is fully performed. All others are executory.

TITLE IV.

UNLAWFUL CONTRACTS.

SECTION 1667. What is unlawful.

1668. Certain contracts unlawful.

1669. Penalties void. (Repealed.)

1670. Contract fixing damages, void...

1671. Exception.

1672. Restraints upon legal proceedings. (Repealed.)

1673. Contract in restraint of trade, void.

1674. Exception in favor of sale of good will.

1675. Exception in favor of partnership arrangements.

1676. Contract in restraint of marriage, void. .

1667. That is not lawful which is:

.. Contrary to an express provision of law;

.. Contrary to the policy of express law, though not expressly prohibited; or,

Otherwise contrary to good morals.

§ 1668. All contracts which have for their object, directly or indirectly, to exempt any one from responsibility for his own fraud, or wilful injury to the person or property of another, or violation of law, whether wilful or negligent, are against the policy of the law.

§ 1669 of said Code is repealed. [In effect July 1, 1874.]

§ 1670. Every contract by which the amount of damage to be paid, or other compensation to be made, for a breach of an obligation, is determined in anticipation thereof, is to that extent void, except as expressly provided in the next section.

§ 1671. The parties to a contract may agree therein upon an amount which shall be presumed to be the amount of damage sustained by a breach thereof, when, from the nature of the case, it would be impracticable or extremely difficult to fix the actual damage.

§ 1672 of said Code is repealed. [In effect July 1, 1874.]

§ 1673. Every contract by which any one is restrained from exercising a lawful profession, trade, or business of any kind, otherwise than is provided by the next two sections, is to that extent void.

§ 1674. One who sells the good will of a business may agree with the buyer to refrain from carrying on a similar business within a specified county, city, or a part thereof, so long as the buyer, or any person deriving title to the good will from him, carries on a like business therein.

§ 1675. Partners may, upon or in anticipation of a dissolution of the partnership, agree that none of them will carry on a similar business within the same city or town where the partnership business has been transacted, or within a specified part thereof.

§ 1676. Every contract in restraint of the marriage of any person, other than a minor, is void.

TITLE V.

EXTINCTION OF CONTRACTS.

CHAPTER I. CONTRACTS, HOW EXTINGUISHED, § 1682.

II. RESCISSION, §§ 1688-1691.

III. ALTERATION AND CANCELLATION, §§ 1697-1701.

CHAPTER I.

CONTRACTS, HOW EXTINGUISHED.

SECTION 1682. Contract, how extinguished.

§ 1682. A contract may be extinguished in like manner with any other obligation, and also in the manner prescribed by this title.

CHAPTER II.

RESCISSION.

SECTION 1688. Rescission extinguishes contract.

1689. When party may rescind.

1690. When stipulations against right to rescind do not defeat it.

1691. Rescission, how effected.

§ 1688. A contract is extinguished by its rescission.

§ 1689. A party to a contract may rescind the same in the following cases only :

1. If the consent of the party rescinding, or of any party jointly contracting with him, was given by mistake, or obtained through duress, menace, fraud, or undue influence, exercised by or with the connivance of the party as to whom he rescinds, or of any other party to the contract jointly interested with such party ;

2. If, through the fault of the party as to whom he rescinds, the consideration for his obligation fails, in whole or in part ;

3. If such consideration becomes entirely void from any cause ;

4. If such consideration, before it is rendered to him, fails in a material respect, from any cause; or,

5. By consent of all the other parties.

58 Cal. 235.

§ 1690. A stipulation that errors of description shall not avoid a contract, or shall be the subject of compensation, or both, does not take away the right of rescission for fraud, nor for mistake, where such mistake is in a matter essential to the inducement of the contract, and is not capable of exact and entire compensation.

§ 1691. Rescission, when not effected by consent, can be accomplished only by the use, on the part of the party rescinding, of reasonable diligence to comply with the following rules:

1. He must rescind promptly, upon discovering the facts which entitle him to rescind, if he is free from duress, menace, undue influence, or disability, and is aware of his right to rescind; and,

2. He must restore to the other party everything of value which he has received from him under the contract; or must offer to restore the same, upon condition that such party shall do likewise, unless the latter is unable or positively refuses to do so.

54 Cal. 190; 55 Cal. 459; 58 Cal. 235, 364, 608.

CHAPTER III.

ALTERATION AND CANCELLATION.

SECTION 1697. Alteration of verbal contract.

1698. Sealed contracts, how modified.

1699. Extinction by cancellation, &c.

1700. Extinction by unauthorized alteration.

1701. Alteration of duplicate, not to prejudice.

§ 1697. A contract not in writing may be altered in any respect by consent of the parties, in writing, without a new consideration, and is extinguished thereby to the extent of the new alteration. [In effect July 1, 1874.]

§ 1698. A contract in writing may be altered by a contract in writing, or by an executed oral agreement, and not otherwise. [In effect July 1, 1874.]

§ 1699. The destruction or cancellation of a written contract, or of the signature of the parties liable thereon, with intent to extinguish the obligation thereof, extinguishes it as to all the parties consenting to the act.

§ 1700. The intentional destruction, cancellation, or material alteration of a written contract, by a party entitled to any benefit under it, or with his consent, extinguishes all the executory obligations of the contract in his favor, against parties who do not consent to the act.

§ 1701. Where a contract is executed in duplicate, an alteration or destruction of one copy, while the other exists, is not within the provisions of the last section.

PART III.

OBLIGATIONS IMPOSED BY LAW.

- SECTION** 1708. Abstinence from injury.
1709. Fraudulent deceit
1710. Deceit, what.
1711. Deceit upon the public, &c.
1712. Restoration of thing wrongfully acquired.
1713. When demand necessary.
1714. Responsibility for wilful acts, negligence, &c.
1715. Other obligations

§ 1708. EVERY person is bound, without contract, to abstain from injuring the person or property of another, or infringing upon any of his rights.

As to what injuries are criminal, see Penal Code, §§ 846-849

§ 1709. One who wilfully deceives another with intent to induce him to alter his position to his injury or risk, is liable for any damage which he thereby suffers.

§ 1710. A deceit, within the meaning of the last section, is either :

1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true ;
2. The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true ;
3. The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact ; or,
4. A promise, made without any intention of performing it.

§ 1711. One who practises a deceit with intent to defraud the public, or a particular class of persons, is deemed to have intended to defraud every individual in that class, who is actually misled by the deceit.

§ 1712. One who obtains a thing without the consent of its owner, or by a consent afterwards rescinded, or by an unlawful exaction which the owner could not at the time prudently refuse, must restore it to the person from whom it was thus obtained, unless he has acquired a title thereto superior to that of such other person, or unless the transaction was corrupt and unlawful on both sides.

§ 1713. The restoration required by the last section must be made without demand, except where a thing is obtained by mutual mistake, in which case the party obtaining the thing is not bound to return it until he has notice of the mistake.

§ 1714. Every one is responsible, not only for the result of his wilful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has, wilfully or by want of ordinary care, brought the injury upon himself. The extent of liability in such cases is defined by the Title on Compensatory Relief.

Penal Code, §§ 848-849.

§ 1715. Other obligations are prescribed by Divisions I and II. of this Code.

PART IV.

OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS.

TITLE I. SALE, §§ 1721-1798.

II. EXCHANGE, §§ 1804-1807.

III. DEPOSIT, §§ 1813-1878.

IV. LOAN, §§ 1884-1920.

V. HIRING, §§ 1925-1959.

VI. SERVICE, §§ 1965-2079.

VII. CARRIAGE, §§ 2085-2209.

VIII. TRUST, §§ 2215-2289.

IX. AGENCY, §§ 2295-2389.

X. PARTNERSHIP, §§ 2395-2520.

XI. INSURANCE, §§ 2527-2766.

XII. INDEMNITY, §§ 2772-2781.

XIII. GUARANTY, §§ 2787-2866.

XIV. LIEN, §§ 2872-3080.

XV. NEGOTIABLE INSTRUMENTS, §§ 3086-3262.

XVI. GENERAL PROVISIONS, § 3268.

TITLE I.

SALE.

CHAPTER I. GENERAL PROVISIONS, §§ 1721-1741.

II. RIGHTS AND OBLIGATIONS OF THE SELLER, §§ 1748-1778.

III. RIGHTS AND OBLIGATIONS OF THE BUYER, §§ 1784-1786.

IV. SALE BY AUCTION, §§ 1792-1798.

CHAPTER I.

GENERAL PROVISIONS.

ARTICLE I. SALE, §§ 1721-1722.

II. AGREEMENTS FOR SALE, §§ 1726-1734.

III. FORM OF THE CONTRACT, §§ 1789-1741.

ARTICLE I.

SALE.

SECTION 1721. Sale, what.

1722. Subject of sale.

§ 1721. SALE is a contract by which, for a pecuniary consideration, called a price, one transfers to another an interest in property.

§ 1722. The subject of sale must be property, the title to which can be immediately transferred from the seller to the buyer.

ARTICLE II.

AGREEMENTS FOR SALE.

SECTION 1726. Agreement for sale.

1727. Agreement to sell.

1728. Agreement to buy.

1729. Agreement to sell and buy

1780. What may be the subject of the contract.

1781. Agreement to sell real property.

1782. Form of grant required by such contract. (Repealed.)

1788. Usual common law covenants required by such contracts, when.

1784. Form of such covenants.

§ 1726. An agreement for sale is either :

1. An agreement to sell ;
2. An agreement to buy ; or,
3. A mutual agreement to sell and buy.

§ 1727. An agreement to sell is a contract by which one engages, for a price, to transfer to another the title to a certain thing.

§ 1728. An agreement to buy is a contract by which one engages to accept from another, and pay a price for the title to a certain thing.

§ 1729. An agreement to sell and buy is a contract by which one engages to transfer the title to a certain thing to another, who engages to accept the same from him and to pay a price therefor.

§ 1730. Any property which, if in existence, might be the subject of sale, may be the subject of an agreement for sale, whether in existence or not.

§ 1731. An agreement to sell real property binds the seller to execute a conveyance in form sufficient to pass the title to the property. [In effect July 1, 1874.]

§ 1732 of said Code is repealed. [In effect July 1, 1874.]

§ 1733. An agreement on the part of a seller of real property to give the usual covenants, binds him to insert in the grant covenants of "seizin," "quiet enjoyment," "further assurance," "general warranty," and "against incumbrances."

§ 1734. The covenants mentioned in the last section must be in substance as follows: "The party of the first part covenants with the party of the second part, that the former is now seized in fee simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all incumbrances; that the party of the first part, and all persons acquiring any interest in the same through or for him, will, on demand, execute and deliver to the party of the second part, at the expense of the latter, any further assurance of the same that may be reasonably required; and that the party of the first part will warrant to the party of the second part all the said property against every person lawfully claiming the same."

ARTICLE III.

FORM OF THE CONTRACT.

SECTION 1739. Contract for sale of personal property.

1740. Contract to manufacture.

1741. Contract for sale of real property.

§ 1739. No sale of personal property, or agreement to buy or sell it for a price of two hundred dollars or more, is valid, unless :

1. The agreement or some note or memorandum thereof be in writing, and subscribed by the party to be charged, or by his agent ; or,

2. The buyer accepts and receives part of the thing sold, or when it consists of a thing in action, part of the evidences thereof, or some of them ; or,

3. The buyer, at the time of sale, pays a part of the price. [In effect July 1, 1874.]

Code Civ. Proc. §§ 1971-1974.

§ 1740. An agreement to manufacture a thing, from materials furnished by the manufacturer, or by another person, is not within the provisions of the last section.

§ 1741. No agreement for the sale of real property, or of an interest therein, is valid, unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party to be charged, or his agent, thereunto authorized, in writing ; but this does not abridge the power of any court to compel the specific performance of any agreement for the sale of real property in case of part performance thereof. [In effect July 1, 1874.]

Code Civ. Proc. §§ 1971-1974.

CHAPTER II.

RIGHTS AND OBLIGATIONS OF THE SELLER.

ARTICLE I. RIGHTS AND DUTIES BEFORE DELIVERY, §§ 1748-1749.

II. DELIVERY, §§ 1753-1758.

III. WARRANTY, §§ 1763-1778

ARTICLE I.

RIGHTS AND DUTIES BEFORE DELIVERY.

- SECTION 1748. When seller must act as depositary.
1749. When seller may resell.

§ 1748. After personal property has been sold, and until the delivery is completed, the seller has the rights and obligations of a depositary for hire, except that he must keep the property, without charge, until the buyer has had a reasonable opportunity to remove it.

§ 1749. If a buyer of personal property does not pay for it according to contract, and it remains in the possession of the seller after payment is due, the seller may rescind the sale, or may enforce his lien for the price, in the manner prescribed by the Title on Liens.

58 Cal. 481.

ARTICLE II.

DELIVERY.

- SECTION 1753. Delivery on demand.
1754. Delivery, where made.
1755. Expense of transportation.
1756. Notice of election as to delivery.
1757. Buyer's directions as to manner of sending thing sold.
1758. Delivery to be within reasonable hours.

§ 1753. One who sells personal property, whether it was in his possession at the time of sale or not, must put it into a condition fit for delivery, and deliver it to the buyer within a reasonable time after demand, unless he has a lien thereon.

§ 1754. Personal property sold is deliverable at the place where it is at the time of the sale or agreement to sell, or if it is not then in existence, it is deliverable at the place where it is produced.

§ 1755. One who sells personal property must bring it to his own door, or other convenient place, for its acceptance by the buyer, but further transportation is at the risk and expense of the buyer.

§ 1756. When either party to a contract of sale has an

option as to the time, place, or manner of delivery, he must give the other party reasonable notice of his choice; and if he does not give such notice within a reasonable time, his right of option is waived.

§ 1757. If a seller agrees to send the thing sold to the buyer, he must follow the directions of the latter as to the manner of sending, or it will be at his own risk during its transportation. If he follows such directions, or if, in the absence of special directions, he uses ordinary care in forwarding the thing, it is at the risk of the buyer.

§ 1758. The delivery of a thing sold can be offered or demanded only within reasonable hours of the day.

ARTICLE III.

WARRANTY.

Section 1768. Warranty, what.

1764. No implied warranty in mere contract of sale.

1765. Warranty of title to personal property.

1766. Warranty on sale by sample.

1767. When seller knows that buyer relies on his statements &c.

1768. Merchandise not in existence.

1769. Manufacturer's warranty against latent defects.

1770. Thing bought for particular purpose.

1771. When thing cannot be examined by buyer.

1772. Trade-marks.

1773. Other marks.

1774. Warranty on sale of written instrument.

1775. Warranty of provisions for domestic use.

1776. Warranty on sale of good will.

1777. Warranty upon judicial sale.

1778. Effect of general warranty.

§ 1763. A warranty is an engagement by which a seller assures to a buyer the existence of some fact affecting the transaction, whether past, present, or future.

§ 1764. Except as prescribed by this article, a mere contract of sale or agreement to sell does not imply a warranty.

§ 1765. One who sells or agrees to sell personal property his own, thereby warrants that he has a good and unincumbered title thereto.

§ 1766. One who sells or agrees to sell goods by sample, thereby warrants the bulk to be equal to the sample.

§ 1767. One who sells or agrees to sell personal property, knowing that the buyer relies upon his advice or judgment, thereby warrants to the buyer that neither the seller, nor any agent employed by him in the transaction, knows the existence of any fact concerning the thing sold which would to his knowledge destroy the buyer's inducement to buy.

§ 1768. One who agrees to sell merchandise not then in existence, thereby warrants that it shall be sound and merchantable at the place of production contemplated by the parties, and as nearly so, at the place of delivery, as can be secured by reasonable care.

§ 1769. One who sells or agrees to sell an article of his own manufacture, thereby warrants it to be free from any latent defect, not disclosed to the buyer, arising from the process of manufacture, and also that neither he nor his agent in such manufacture has knowingly used improper materials therein.

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73. § 1770. One who manufactures an article under an order for a particular purpose, warrants by the sale that it is reasonably fit for that purpose.

§ 1771. One who sells or agrees to sell merchandise inaccessible to the examination of the buyer, thereby warrants that it is sound and merchantable.

§ 1772. One who sells or agrees to sell any article to which there is affixed or attached a trade-mark, thereby warrants that mark to be genuine and lawfully used.

Penal Code, § 351.

§ 1773. One who sells or agrees to sell any article to which there is affixed or attached a statement or mark to express the quantity or quality thereof, or the place where it was, in whole or in part, produced, manufactured, or prepared, thereby warrants the truth thereof.

Pol. Code, § 8199.

§ 1774. One who sells or agrees to sell an instrument pur

porting to bind any one to the performance of an act, thereby warrants that he has no knowledge of any facts which tend to prove it worthless, such as the insolvency of any of the parties thereto, where that is material, the extinction of its obligations, or its invalidity for any cause. [In effect July 1, 1874.]

§ 1775. One who makes a business of selling provisions for domestic use warrants by a sale thereof, to one who buys for actual consumption, that they are sound and wholesome.

§ 1776. One who sells the good will of a business, thereby warrants that he will not endeavor to draw off any of the customers.

§ 1777. Upon a judicial sale, the only warranty implied is that the seller does not know that the sale will not pass a good title to the property.

§ 1778. A general warranty does not extend to defects inconsistent therewith of which the buyer was then aware, or which were then easily discernible by him without the exercise of peculiar skill; but it extends to all other defects.

CHAPTER III.

RIGHTS AND OBLIGATIONS OF THE BUYER.

SECTION 1784. Price, when to be paid.

1785. Right to inspect goods.

1786. Rights in case of breach of warranty.

§ 1784. A buyer must pay the price of the thing sold on its delivery, and must take it away within a reasonable time after the seller offers to deliver it.

§ 1785. On an agreement for sale, with warranty, the buyer has a right to inspect the thing sold, at a reasonable time, before accepting it; and may rescind the contract if the seller refuses to permit him to do so.

§ 1786. The breach of a warranty entitles the buyer to rescind an agreement for sale, but not an executed sale, unless the warranty was intended by the parties to operate as a condition.

CHAPTER IV.

SALE BY AUCTION.

- SECTION 1792.** Sale by auction, what.
 1793. Sale, when complete.
 1794. Withdrawal of bid.
 1795. Sale under written conditions.
 1796. Rights of buyer upon sale without reserve
 1797. By bidding.
 1798. Auctioneer's memorandum of sale.

§ 1792. A sale by auction is a sale by public outcry to the highest bidder on the spot.

§ 1793. A sale by auction is complete when the auctioneer publicly announces, by the fall of his hammer, or in any other customary manner, that the thing is sold.

§ 1794. Until the announcement mentioned in the last section has been made, any bidder may withdraw his bid, if he does so in a manner reasonably sufficient to bring it to the notice of the auctioneer.

§ 1795. When a sale by auction is made upon written or printed conditions, such conditions cannot be modified by any oral declaration of the auctioneer, except so far as they are for his own benefit.

§ 1796. If, at a sale by auction, the auctioneer, having authority to do so, publicly announces that the sale will be without reserve, or makes any announcement equivalent thereto, the highest bidder in good faith has an absolute right to the completion of the sale to him; and, upon such a sale, bids by the seller, or any agent for him, are void.

§ 1797. The employment by a seller of any person to bid at a sale by auction, without the knowledge of the buyer, without an intention on the part of such bidder to buy, and on the part of the seller to enforce his bid, is a fraud upon the buyer, which entitles him to rescind his purchase.

§ 1798. When property is sold by auction, an entry made by the auctioneer, in his sale-book, at the time of the sale, specifying the name of the person for whom he sells, the thing

sold, the price, the terms of sale, and the name of the buyer, binds both the parties in the same manner as if made by themselves. [In effect July 1, 1874.]

TITLE II.

EXCHANGE.

SECTION 1804. Exchange, what.

1805. Form of contract.

1806. Parties have rights and obligations of sellers and buyers

1807. Warranty of money.

§ 1804. Exchange is a contract by which the parties mutually give, or agree to give, one thing for another, neither thing, or both things, being money only.

§ 1805. The provisions of section 1739 apply to all exchanges in which the value of the thing to be given by either party is two hundred dollars or more.

§ 1806. The provisions of the Title on Sale apply to exchanges. Each party has the rights and obligations of a seller as to the thing which he gives, and of a buyer as to that which he takes.

§ 1807. On an exchange of money, each party thereby warrants the genuineness of the money given by him.

TITLE III.

DEPOSIT.

CHAPTER I. DEPOSIT IN GENERAL, §§ 1813-1827.

II. DEPOSIT FOR KEEPING, §§ 1833-1872.

III. DEPOSIT FOR EXCHANGE, § 1878.

CHAPTER I.

DEPOSIT IN GENERAL.

ARTICLE I. NATURE AND CREATION OF DEPOSIT, §§ 1813-1818.

II OBLIGATIONS OF THE DEPOSITARY, §§ 1822-1827.

ARTICLE I.

NATURE AND CREATION OF DEPOSIT.

SECTION 1813. Deposit, kinds of.

1814. Voluntary deposit, how made.

1815. Involuntary deposit, how made.

1816. Same.

1817. Deposit for keeping, what.

1818. Deposit for exchange, what.

§ 1813. A deposit may be voluntary or involuntary; and for safe keeping or for exchange.

§ 1814. A voluntary deposit is made by one giving to another, with his consent, the possession of personal property to keep for the benefit of the former, or of a third party. The person giving is called the depositor, and the person receiving the depositary.

§ 1815. An involuntary deposit is made :

1. By the accidental leaving or placing of personal property in the possession of any person, without negligence on the part of its owner; or,

2. In cases of fire, shipwreck, inundation, insurrection, riot, or like extraordinary emergencies, by the owner of personal property committing it, out of necessity, to the care of any person.

§ 1816. The person with whom a thing is deposited in the manner described in the last section is bound to take charge of it, if able to do so.

§ 1817. A deposit for keeping is one in which the depositary is bound to return the identical thing deposited.

§ 1818. A deposit for exchange is one in which the depositary is only bound to return a thing corresponding in kind to that which is deposited.

ARTICLE II.

OBLIGATIONS OF THE DEPOSITARY.

- SECTION 1822. Depositary must deliver on demand.
1823. No obligation to deliver without demand.
1824. Place of delivery.
1825. Notice to owner of adverse claim.
1826. Notice to owner of thing wrongfully detained.
1827. Delivery of thing owned jointly, &c.

§ 1822. A depositary must deliver the thing to the person for whose benefit it was deposited, on demand, whether the deposit was made for a specified time or not, unless he has a lien upon the thing deposited, or has been forbidden or prevented from doing so by the real owner thereof, or by the act of the law, and has given the notice required by section 1825.

§ 1823. A depositary is not bound to deliver a thing deposited without demand, even where the deposit is made for a specified time.

§ 1824. A depositary must deliver the thing deposited at his residence or place of business, as may be most convenient for him.

§ 1825. A depositary must give prompt notice to the person for whose benefit the deposit was made, of any proceedings taken adversely to his interest in the thing deposited, which may tend to excuse the depositary from delivering the thing to him.

§ 1826. A depositary, who believes that a thing deposited with him is wrongfully detained from its true owner, may give him notice of the deposit; and if within a reasonable time afterwards he does not claim it, and sufficiently establish his right thereto, and indemnify the depositary against the claim of the depositor, the depositary is exonerated from liability to the person to whom he gave the notice, upon returning the thing to the depositor, or assuming, in good faith, a new obligation changing his position in respect to the thing, to his prejudice.

§ 1827. If a thing deposited is owned jointly or in com.

mon by persons who cannot agree upon the manner of its delivery, the depositary may deliver to each his proper share thereof, if it can be done without injury to the thing.

CHAPTER II.

DEPOSIT FOR KEEPING.

ARTICLE I. GENERAL PROVISIONS, §§ 1833-1840.

II. GRATUITOUS DEPOSIT, §§ 1844-1847.

III. STORAGE, §§ 1851-1855.

IV. INNKEEPERS, §§ 1859-1863.

V. FINDING, §§ 1864-1872.

ARTICLE I.

GENERAL PROVISIONS.

- SECTION 1833.** Depositor must indemnify depositary
1834. Obligation of depositary of animals.
1835. Obligations as to use of thing deposited.
1836. Liability for damage arising from wrongful use
1837. Sale of thing in danger of perishing.
1838. Injury to, or loss of thing deposited.
1839. Service rendered by depositary.
1840. Extent of his liability for negligence.

§ 1833. A depositor must indemnify the depositary :

1. For all damage caused to him by the defects or vices of the thing deposited ; and,
2. For all expenses necessarily incurred by him about the thing, other than such as are involved in the nature of the undertaking.

§ 1834. A depositary of living animals must provide them with suitable food and shelter, and treat them kindly.

§ 1835. A depositary may not use the thing deposited, or permit it to be used, for any purpose, without the consent of the depositor. He may not, if it is purposely-fastened by the depositor, open it without the consent of the latter, except in case of necessity.

§ 1836. A depositary is liable for any damage happening

to the thing deposited, during his wrongful use thereof, unless such damage must inevitably have happened though the property had not been thus used.

§ 1837. If a thing deposited is in actual danger of perishing before instructions can be obtained from the depositor, the depositary may sell it for the best price obtainable, and retain the proceeds as a deposit, giving immediate notice of his proceedings to the depositor.

§ 1838. If a thing is lost or injured during its deposit, and the depositary refuses to inform the depositor of the circumstances under which the loss or injury occurred, so far as he has information concerning them, or wilfully misrepresents the circumstances to him, the depositary is presumed to have wilfully, or by gross negligence, permitted the loss or injury to occur.

53 Cal. 736.

§ 1839. So far as any service is rendered by a depositary, or required from him, his duties and liabilities are prescribed by the Title on Employment and Service.

§ 1840. The liability of a depositary for negligence cannot exceed the amount which he is informed by the depositor, or has reason to suppose, the thing deposited to be worth. [In effect July 1, 1874.]

ARTICLE II.

GRATUITOUS DEPOSIT.

SECTION 1844. Gratuitous deposit, what.

1845. Nature of involuntary deposit.

1846. Degree of care required of gratuitous depositary.

1847. His duties cease, when.

§ 1844. Gratuitous deposit is a deposit for which the depositary receives no consideration beyond the mere possession of the thing deposited.

§ 1845. An involuntary deposit is gratuitous, the depositary being entitled to no reward.

§ 1846. A gratuitous depositary must use, at least, slight care for the preservation of the thing deposited.

§ 1847. The duties of a gratuitous depositary cease :

1. Upon his restoring the thing deposited to its owner; or,
 2. Upon his giving reasonable notice to the owner to remove it, and the owner failing to do so within a reasonable time.
- But an involuntary depositary, under subdivision 2 of section 1815, cannot give such notice until the emergency which gave rise to the deposit is past.

ARTICLE III.

STORAGE.

SECTION 1851. Deposit for hire.

1852. Degree of care required of depositary for hire.

1853. Rate of compensation for fraction of a week, &c

1854. Termination of deposit.

1855. Same.

§ 1851. A deposit not gratuitous is called storage. The depositary in such case is called a depositary for hire.

§ 1852. A depositary for hire must use at least ordinary care for the preservation of the thing deposited.

56 Cal. 485.

§ 1853. In the absence of a different agreement or usage, a depositary for hire is entitled to one week's hire for the sustenance and shelter of living animals during any fraction of a week, and to half a month's hire for the storage of any other property during any fraction of a half month.

§ 1854. In the absence of an agreement as to the length of time during which a deposit is to continue, it may be terminated by the depositor at any time, and by the depositary upon reasonable notice.

§ 1855. Notwithstanding an agreement respecting the length of time during which a deposit is to continue, it may be terminated by the depositor on paying all that would become due to the depositary in case of the deposit so continuing.

ARTICLE IV.

INNKEEPERS.

SECTION 1859. Innkeeper's liability.

1860. How exempted from liability.

1861. Lien of boarding and lodging-house keepers.

1862. Sale of baggage by boarding or lodging-house keepers.

1863. Notices in hotels and boarding-houses.

§ 1859. An innkeeper is liable for all losses of or injuries to personal property placed by his guests under his care, unless occasioned by an irresistible superhuman cause, by a public enemy, by the negligence of the owner, or by the act of some one whom he brought into the inn.

Refusing to receive and entertain guests a misdemeanor. Penal Code, § 366.

§ 1860. If an innkeeper keeps a fireproof safe, and gives notice to a guest, either personally or by putting up a printed notice in a prominent place in the room occupied by the guest, that he keeps such a safe, and will not be liable for money, jewelry, documents, or other articles of unusual value and small compass, unless placed therein, he is not liable, except so far as his own acts contribute thereto, for any loss of or injury to such articles, if not deposited with him, and not required by the guest for present use.

§ 1861. Hotel men, boarding-house and lodging-house keepers, shall have a lien upon the baggage and other property of value of their guests, or boarders, or lodgers, brought into such hotel, inn, or boarding or lodging-house by such guests, or boarders, or lodgers, for the proper charges due from such guests, or boarders, or lodgers, for their accommodation, board and lodging, and room rent, and such extras as are furnished at their request, with the right to the possession of such baggage, or other property of value, until all such charges are paid. [In effect April 1, 1876.]

§ 1862. Whenever any trunk, carpet bag, valise, box, bundle, or other baggage has heretofore come, or shall hereafter come, into the possession of the keeper of any hotel, inn, boarding, or lodging-house, as such, and has remained, or shall remain, unclaimed for the period of six months, such keeper may proceed to sell the same at public auc-

tion, and out of the proceeds of such sale may retain the charges for storage, if any, and the expense of advertising and sale thereof; but no such sale shall be made until the expiration of four weeks from the first publication of notice of such sale in a newspaper published in or nearest the city, town, village, or place in which said hotel, inn, boarding or lodging-house is situated. Said notice shall be published once a week, for four successive weeks, in some newspaper, daily or weekly, of general circulation, and shall contain a description of each trunk, carpet bag, valise, box, bundle, or other baggage, as near as may be; the name of the owner, if known; the name of said keeper, and the time and place of sale; and the expenses incurred for advertising shall be a lien upon such trunk, carpet bag, valise, box, bundle, or other baggage, in a ratable proportion, according to the value of such piece of property, or thing, or article sold; and in case any balance arising from such sale shall not be claimed by the rightful owner within one week from the day of said sale, the same shall be paid into the treasury of the county in which such sale took place; and if the same be not claimed by the owner thereof, or his legal representatives, within one year thereafter, the same shall be paid into the general fund of said county. [In effect April 1, 1876.]

§ 1863. Every keeper of a hotel, inn, boarding or lodging-house shall post, in conspicuous place, in the office, or public room, and in every bedroom of said hotel, boarding-house, inn, or lodging-house, a printed copy of this section, and a statement of charge, or rate of charges, by the day, and for meals or items furnished, and for lodging. No charge or sum shall be collected or received by any such person for any service not actually rendered, or for any item not actually delivered, or for any greater or other sum than he is entitled to by the general rules and regulations of said hotel, inn, boarding or lodging-house. For any violation of this or any provision herein contained, the offender shall forfeit to the injured party three times the amount of the sum charged in excess of what he is entitled to. [In effect April 1, 1876.]

ARTICLE V.

FINDING.

- SECTION** 1864. Obligation of finder.
 1865. Finder to notify owner.
 1866. Claimant to prove ownership.
 1867. Reward, &c., to finder.
 1868. Finder may put thing found on storage.
 1869. When finder may sell the thing found.
 1870. How sale is to be made.
 1871. Surrender of thing to the finder.
 1872. Thing abandoned.

§ 1864. One who finds a thing lost is not bound to take charge of it, but if he does so he is thenceforward a depositary for the owner, with the rights and obligations of a depositary for hire.

§ 1865. If the finder of a thing knows or suspects who is the owner, he must, with reasonable diligence, give him notice of the finding; and if he fails to do so, he is liable in damages to the owner, and has no claim to any reward offered by him for the recovery of the thing, or to any compensation for his trouble or expenses.

If owner is not known finder must report to justice of the peace and advertise. If he fails to do so he forfeits double the value thereof to the owner. Pol. Code, §§ 8186-8142; Penal Code, § 485.

§ 1866. The finder of a thing may, in good faith, before giving it up, require reasonable proof of ownership from any person claiming it.

Pol. Code, §§ 8186-8142.

§ 1867. The finder of a thing is entitled to compensation for all expenses necessarily incurred by him in its preservation, and for any other service necessarily performed by him about it, and to a reasonable reward for keeping it.

1868. The finder of a thing may exonerate himself a liability at any time by placing it on storage with any sensible person of good character, at a reasonable expense.

1869. The finder of a thing may sell it, if it is a thing which is commonly the subject of sale, when the owner cannot, with reasonable diligence, be found, or being found, re-

fuses, upon demand, to pay the lawful charges of the finder, in the following cases :

1. When the thing is in danger of perishing, or of losing the greater part of its value; or,
2. When the lawful charges of the finder amount to two thirds of its value.

Pol. Code, §§ 8186-8142.

§ 1870. A sale under the provisions of the last section must be made in the same manner as the sale of a thing pledged.

§ 1871. The owner of a thing found may exonerate himself from the claims of the finder by surrendering it to him in satisfaction thereof.

§ 1872. The provisions of this article have no application to things which have been intentionally abandoned by their owners.

CHAPTER III.

DEPOSIT FOR EXCHANGE.

SECTION 1878. Relations of the parties.

§ 1878. A deposit for exchange transfers to the depositary the title to the thing deposited, and creates between him and the depositor the relation of debtor and creditor merely.

TITLE IV.

LOAN.

CHAPTER I. LOAN FOR USE, §§ 1884-1896.

II. LOAN FOR EXCHANGE, §§ 1902-1906.

III. LOAN OF MONEY, §§ 1912-1920.

CHAPTER I.

LOAN FOR USE.

- SECTION** 1884. Loan, what.
 1885. Title to property lent.
 1886. Care required of borrower.
 1887. Same.
 1888. Degree of skill.
 1889. Borrower, when to repair injuries.
 1890. Use of thing lent.
 1891. Relending forbidden.
 1892. Borrower, when to bear expenses.
 1893. Lender liable for defects.
 1894. Lender may require return of thing lent.
 1895. When returnable without demand.
 1896. Place of return.

§ 1884. A loan for use is a contract by which one gives to another the temporary possession and use of personal property, and the latter agrees to return the same thing to him at a future time, without reward for its use.

§ 1885. A loan for use does not transfer the title to the thing; and all its increase during the period of the loan belongs to the lender.

§ 1886. A borrower for use must use great care for the preservation in safety and in good condition of the thing lent.

§ 1887. One who borrows a living animal for use must treat it with great kindness, and provide everything necessary and suitable for it.

§ 1888. A borrower for use is bound to have and to exercise such skill in the care of the thing lent as he causes the lender to believe him to possess.

1889. A borrower for use must repair all deteriorations injuries to the thing lent, which are occasioned by his negligence, however slight.

1890. The borrower of a thing for use may use it for purposes only as the lender might reasonably anticipate at the time of lending.

§ 1891. The borrower of a thing for use must not part with it to a third person, without the consent of the lender.

§ 1892. The borrower of a thing for use must bear all its expenses during the loan, except such as are necessarily incurred by him to preserve it from unexpected and unusual injury. For such expenses he is entitled to compensation from the lender, who may, however, exonerate himself by surrendering the thing to the borrower.

§ 1893. The lender of a thing for use must indemnify the borrower for damage caused by defects or vices in it, which he knew at the time of lending, and concealed from the borrower.

§ 1894. The lender of a thing for use may at any time require its return, even though he lent it for a specified time or purpose. But if, on the faith of such an agreement, the borrower has made such arrangements that a return of the thing before the period agreed upon would cause him loss, exceeding the benefit derived by him from the loan, the lender must indemnify him for such loss, if he compels such return, the borrower not having in any manner violated his duty.

§ 1895. If a thing is lent for use for a specified time or purpose, it must be returned to the lender without demand, as soon as the time has expired, or the purpose has been accomplished. In other cases it need not be returned until demanded.

§ 1896. The borrower of a thing for use must return it to the lender, at the place contemplated by the parties at the time of lending; or if no particular place was so contemplated by them, then at the place where it was at that time.

CHAPTER II.

LOAN FOR EXCHANGE.

SECTION 1902. Loan for exchange, what.

1903. Same.

1904. Title to property lent.

1905. Contract cannot be modified by lender.

1906. Certain sections applicable.

§ 1902. A loan for exchange is a contract by which one delivers personal property to another, and the latter agrees to return to the lender a similar thing at a future time, without reward for its use.

§ 1903. A loan, which the borrower is allowed by the lender to treat as a loan for use, or for exchange, at his option, is subject to all the provisions of this chapter.

§ 1904. By a loan for exchange the title to the thing lent is transferred to the borrower, and he must bear all its expenses, and is entitled to all its increase.

§ 1905. A lender for exchange cannot require the borrower to fulfil his obligations at a time, or in a manner, different from that which was originally agreed upon.

§ 1906. Sections 1893, 1895, and 1896, apply to a loan for exchange.

CHAPTER III.

LOAN OF MONEY.

SECTION 1912. Loan of money.

1918. Loan to be repaid in current money.

1914. Loan presumed to be on interest.

1915. Interest, what.

1916. Annual rate.

1917. Legal interest.

1918. Same.

1919. Interest becomes part of principal, when.

1920. Interest on judgment.

§ 1912. A loan of money is a contract by which one delivers a sum of money to another, and the latter agrees to return at a future time a sum equivalent to that which he borrowed. A loan for mere use is governed by the Chapter on Loan for Use.

§ 1913. A borrower of money, unless there is an express contract to the contrary, must pay the amount due in such money as is current at the time when the loan becomes due, whether such money is worth more or less than the actual money lent.

§ 1914. Whenever a loan of money is made, it is presumed to be made upon interest, unless it is otherwise expressly stipulated at the time in writing. [In effect July 1, 1874.]

§ 1915. Interest is the compensation allowed by law or fixed by the parties for the use, or forbearance, or detention of money. [In effect July 1, 1874.]

§ 1916. When a rate of interest is prescribed by a law or contract, without specifying the period of time by which such rate is to be calculated, it is to be deemed an annual rate.

§ 1917. Unless there is an express contract in writing fixing a different rate, interest is payable on all moneys at the rate of seven per cent. per annum, after they become due on any instrument of writing, except a judgment, and on moneys lent or due on any settlement of accounts, from the day on which the balance is ascertained, and on moneys received to the use of another and detained from him. In the computation of interest for a period less than a year, three hundred and sixty days are deemed to constitute a year. [In effect April 16, 1878.]

67 Cal. 648.

§ 1918. Parties may agree in writing for the payment of any rate of interest, and it shall be allowed, according to the terms of the agreement, until the entry of judgment.

§ 1919. The parties may, in any contract in writing whereby any debt is secured to be paid, agree that if the interest on such debt is not punctually paid, it shall become a part of the principal, and thereafter bear the same rate of interest as the principal debt.

§ 1920. Interest is payable on judgments recovered in the courts of this State, at the rate of seven per cent. per annum and no greater rate, but such interest must not be compounded in any manner or form. [In effect July 1, 1874.]

49 Cal. 214

TITLE V.

HIRING.

CHAPTER I. HIRING IN GENERAL, §§ 1925-1935.

II. HIRING OF REAL PROPERTY, §§ 1941-1950.

III. HIRING OF PERSONAL PROPERTY, §§ 1955-1959.

CHAPTER I.

HIRING IN GENERAL.

SECTION 1925. Hiring, what.

1926. Products of thing.

1927. Quiet possession.

1928. Degree of care, &c., on part of hirer.

1929. Must repair injuries, &c.

1930. Thing let for a particular purpose.

1931. When letter may terminate the hiring.

1932. When hirer may terminate the hiring.

1933. When hiring terminates.

1934. When terminated by death, &c., of party.

1935. Apportionment of hire.

§ 1925. Hiring is a contract by which one gives to another the temporary possession and use of property, other than money, for reward, and the latter agrees to return the same to the former at a future time.

§ 1926. The products of a thing hired, during the hiring, belong to the hirer.

§ 1927. An agreement to let upon hire binds the letter to secure to the hirer the quiet possession of the thing hired during the term of the hiring, against all persons lawfully claiming the same.

1928. The hirer of a thing must use ordinary care for reservation in safety and in good condition.

1929. The hirer of a thing must repair all deteriorations juries thereto occasioned by his ordinary negligence.

§ 1930. When a thing is let for a particular purpose the hirer must not use it for any other purpose; and if he does, the letter may hold him responsible for its safety during such use in all events, or may treat the contract as thereby rescinded.

§ 1931. The letter of a thing may terminate the hiring and reclaim the thing before the end of the term agreed upon:

1. When the hirer uses or permits a use of the thing hired in a manner contrary to the agreement of the parties; or,
2. When the hirer does not, within a reasonable time after request, make such repairs as he is bound to make.

§ 1932. The hirer of a thing may terminate the hiring before the end of the term agreed upon:

1. When the letter does not, within a reasonable time after request, fulfil his obligations, if any, as to placing and securing the hirer in the quiet possession of the thing hired, or putting it into good condition, or repairing; or,
2. When the greater part of the thing hired, or that part which was and which the letter had at the time of the hiring reason to believe was the material inducement to the hirer to enter into the contract, perishes from any other cause than the ordinary negligence of the hirer.

§ 1933. The hiring of a thing terminates:

1. At the end of the term agreed upon;
2. By the mutual consent of the parties;
3. By the hirer acquiring a title to the thing hired superior to that of the letter; or,
4. By the destruction of the thing hired.

§ 1934. If the hiring of a thing is terminable at the pleasure of one of the parties, it is terminated by notice to the other of his death or incapacity to contract. In other cases it is not terminated thereby.

§ 1935. When the hiring of a thing is terminated before the time originally agreed upon, the hirer must pay the due proportion of the hire for such use as he has actually made of the thing, unless such use is merely nominal, and of no benefit to him.

CHAPTER II.

HIRING OF REAL PROPERTY.

- SECTION** 1941. Lessor to make dwelling-house fit for its purpose.
1942. When lessee may make repairs, &c.
1943. Term of hiring when no limit is fixed.
1944. Hiring of lodgings for indefinite term.
1945. Renewal of lease by lessee's continued possession.
1946. Notice to quit.
1947. Rent, when payable.
1948. Attornment of a tenant to a stranger.
1949. Tenant must deliver notice served on him.
1950. Letting parts of rooms forbidden.

§ 1941. The lessor of a building intended for the occupation of human beings must, in the absence of an agreement to the contrary, put it into a condition fit for such occupation, and repair all subsequent dilapidations thereof, which render it untenable, except such as are mentioned in section nineteen hundred and twenty-nine. [In effect July 1, 1874.]

§ 1942. If within a reasonable time after notice to the lessor, of dilapidations which he ought to repair, he neglects to do so, the lessee may repair the same himself, where the costs of such repairs do not require an expenditure greater than one month's rent of the premises, and deduct the expenses of such repairs from the rent, or the lessee may vacate the premises, in which case he shall be discharged from further payment of rent, or performance of other conditions. [In effect July 1, 1874.]

§ 1943. A hiring of real property, other than lodgings and dwelling-houses, in places where there is no usage on the subject, is presumed to be for one year from its commencement, unless otherwise expressed in the hiring.

§ 1944. A hiring of lodgings or a dwelling-house for an unspecified term is presumed to have been made for such length of time as the parties adopt for the estimation of the rent. Thus a hiring at a monthly rate of rent is presumed to be for one month. In the absence of any agreement respecting the length of time or the rent, the hiring is presumed to be monthly.

§ 1945. If a lessee of real property remains in possession thereof after the expiration of the hiring, and the lessor accepts rent from him, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding one month when the rent is payable monthly, nor in any case one year.

§ 1946. A hiring of real property, for a term not specified by the parties, is deemed to be renewed as stated in the last section, at the end of the term implied by law, unless one of the parties gives notice to the other of his intention to terminate the same, at least as long before the expiration thereof as the term of the hiring itself, not exceeding one month.

§ 1947. When there is no usage or contract to the contrary, rents are payable at the termination of the holding, when it does not exceed one year. If the holding is by the day, week, month, quarter, or year, rent is payable at the termination of the respective periods, as it successively becomes due.

§ 1948. The attornment of a tenant to a stranger is void, unless it is made with the consent of the landlord, or in consequence of a judgment of a court of competent jurisdiction.

§ 1949. Every tenant who receives notice of any proceeding to recover the real property occupied by him, or the possession thereof, must immediately inform his landlord of the same, and also deliver to the landlord the notice, if in writing, and is responsible to the landlord for all damages which he may sustain by reason of any omission to inform him of the notice, or to deliver it to him if in writing. [In effect July 1, 1874.]

§ 1950. One who hires part of a room for a dwelling is entitled to the whole of the room, notwithstanding any agreement to the contrary; and if a landlord lets a room as a dwelling for more than one family, the person to whom he first lets any part of it is entitled to the possession of the whole room for the term agreed upon, and every tenant in the building, under the same landlord, is relieved from all obligation to pay rent to him while such double letting of any room continues.

See Act of April 8, 1876, Concerning Lodging-houses and Sleeping Apartments, Appendix, pp.

CHAPTER III.

HIRING OF PERSONAL PROPERTY.

SECTION 1955. Obligations of letter of personal property.

- 1956. Ordinary expenses.
- 1957. Extraordinary expenses.
- 1958. Return of thing hired.
- 1959. Charter party, what.

§ 1955. One who lets personal property must deliver it to the hirer, secure his quiet enjoyment thereof against all lawful claimants, put it into a condition fit for the purpose for which he lets it, and repair all deteriorations thereof not occasioned by the fault of the hirer and not the natural result of its use.

§ 1956. A hirer of personal property must bear all such expenses concerning it as might naturally be foreseen to attend it during its use by him. All other expenses must be borne by the letter.

§ 1957. If a letter fails to fulfil his obligations, as prescribed by section 1955, the hirer, after giving him notice to do so, if such notice can conveniently be given, may expend any reasonable amount necessary to make good the letter's default, and may recover such amount from him.

§ 1958. At the expiration of the term for which personal property is hired, the hirer must return it to the letter at the place contemplated by the parties at the time of hiring; or, if no particular place was so contemplated by them, at the place at which it was at that time.

§ 1959. The contract by which a ship is let is termed a charter party. By it the owner may either let the capacity or burden of the ship, continuing the employment of the owner's master, crew, and equipments, or may surrender the entire ship to the charterer, who then provides them himself. The master or a part owner may be a charterer.

TITLE VI. SERVICE.

- CHAPTER I. SERVICE WITH EMPLOYMENT, §§ 1965-2003.**
- II. PARTICULAR EMPLOYMENTS, §§ 2009-2072.**
- III. SERVICE WITHOUT EMPLOYMENT, §§ 2078-2079.**

CHAPTER I.

SERVICE WITH EMPLOYMENT.

- ARTICLE I. DEFINITION OF EMPLOYMENT, § 1965.**
- II. OBLIGATIONS OF THE EMPLOYER, §§ 1969-1971.**
- III. OBLIGATIONS OF THE EMPLOYEE, §§ 1975-1992.**
- IV. TERMINATION OF EMPLOYMENT, §§ 1996-2008.**

ARTICLE I.

DEFINITION OF EMPLOYMENT.

SECTION 1965. Employment, what.

§ 1965. The contract of employment is a contract by which one, who is called the employer, engages another, who is called the employee, to do something for the benefit of the employer, or of a third person.
55 Cal. 274.

ARTICLE II.

OBLIGATIONS OF THE EMPLOYER.

- SECTION 1969.** When employer must indemnify employee.
- 1970. When not.
- 1971. Employer to indemnify for his own negligence.

§ 1969. An employer must indemnify his employee, except as prescribed in the next section, for all that he necessarily expends or loses in direct consequence of the discharge of his duties as such, or of his obedience to the directions of the employer, even though unlawful, unless the employee, at the

time of obeying such directions, believed them to be unlawful.

§ 1970. An employer is not bound to indemnify his employee for losses suffered by the latter in consequence of the ordinary risks of the business in which he is employed, nor in consequence of the negligence of another person employed by the same employer in the same general business, unless he has neglected to use ordinary care in the selection of the culpable employee.

51 Cal. 117, 257; 53 Cal. 36; 57 Cal. 15, 20.

84C R 393

§ 1971. An employer must in all cases indemnify his employee for losses caused by the former's want of ordinary care.

ARTICLE III.

OBLIGATIONS OF THE EMPLOYEE.

Section 1975. Duties of gratuitous employee.

1976. Same.

1977. Same.

1978. Duties of employee for reward.

1979. Duties of employee for his own benefit.

1980. Contracts for service limited to two years.

1981. Employee must obey employer.

1982. Employee to conform to usage.

1983. Degree of skill required.

1984. Must use what skill he has.

1985. What belongs to employer.

1986. Duty to account.

1987. Employee not bound to deliver without demand.

1988. Preference to be given to employers.

1989. Responsibility of employee for substitute.

1990. Responsibility for negligence.

1991. Surviving employee.

1992. Confidential employment.

§ 1975. One who, without consideration, undertakes to do a service for another, is not bound to perform the same, but if he actually enters upon its performance, he must use at least slight care and diligence therein.

§ 1976. One who, by his own special request, induces another to intrust him with the performance of a service, must perform the same fully. In other cases, one who undertakes gratuitous service may relinquish it at any time.

§ 1977. A gratuitous employee, who accepts a written

power of attorney, must act under it so long as it remains in force, or until he gives notice to his employer that he will not do so.

§ 1978. One who, for a good consideration, agrees to serve another, must perform the service, and must use ordinary care and diligence therein, so long as he is thus employed.

§ 1979. One who is employed at his own request to do that which is more for his own advantage than for that of his employer, must use great care and diligence therein to protect the interest of the latter.

§ 1980. A contract to render personal service, other than a contract of apprenticeship, as provided in the Chapter on Master and Servant, cannot be enforced against the employee beyond the term of two years from the commencement of service under it; but if the employee voluntarily continues his service under it beyond that time, the contract may be referred to as affording a presumptive measure of the compensation.

§ 1981. An employee must substantially comply with all the directions of his employer concerning the service on which he is engaged, except where such obedience is impossible or unlawful, or would impose new and unreasonable burdens upon the employee. [In effect July 1, 1874.]

§ 1982. An employee must perform his service in conformity to the usage of the place of performance, unless otherwise directed by his employer, or unless it is impracticable, or manifestly injurious to his employer to do so.

§ 1983. An employee is bound to exercise a reasonable degree of skill, unless his employer has notice, before employing him, of his want of skill.

§ 1984. An employee is always bound to use such skill as he possesses, so far as the same is required, for the service specified. [In effect July 1, 1874.]

§ 1985. Everything which an employee acquires by virtue of his employment, except the compensation, if any, which is due to him from his employer, belongs to the latter, whether

acquired lawfully or unlawfully, or during or after the expiration of the term of his employment.

§ 1986. An employee must, on demand, render to his employer just accounts of all his transactions in the course of his service, as often as may be reasonable, and must, without demand, give prompt notice to his employer of everything which he receives for his account.

§ 1987. An employee who receives anything on account of his employer, in any capacity other than that of a mere servant, is not bound to deliver it to him until demanded, and is not at liberty to send it to him from a distance, without demand, in any mode involving greater risk than its retention by the employee himself.

§ 1988. An employee who has any business to transact on his own account, similar to that intrusted to him by his employer, must always give the latter the preference. [In effect July 1, 1874.]

§ 1989. An employee who is expressly authorized to employ a substitute is liable to his principal only for want of ordinary care in his selection. The substitute is directly responsible to the principal.

§ 1990. An employee who is guilty of a culpable degree of negligence is liable to his employer for the damage thereby caused to the latter; and the employer is liable to him, if the service is not gratuitous, for the value of such services only as are properly rendered.

§ 1991. Where service is to be rendered by two or more persons jointly, and one of them dies, the survivor must act alone, if the service to be rendered is such as he can rightly perform without the aid of the deceased person, but not other-

8.

1992. The obligations peculiar to confidential employees are defined in the Title on Trusts.

ARTICLE IV.

TERMINATION OF EMPLOYMENT.

SECTION 1996. Termination by death, &c., of employer.

1997. Employment, how terminated.

1998. Continuance of service in certain cases.

1999. Termination at will.

2000. Termination by employer for fault.

2001. Termination by employee for fault.

2002. Compensation of employee dismissed for cause.

2003. Compensation of employee leaving for cause.

§ 1996. Every employment in which the power of the employee is not coupled with an interest in its subject is terminated by notice to him of:

1. The death of the employer; or,
2. His legal incapacity to contract.

§ 1997. Every employment is terminated:

1. By the expiration of its appointed term;
2. By the extinction of its subject;
3. By the death of the employee; or,
4. By his legal incapacity to act as such.

§ 1998. An employee, unless the term of his service has expired, or unless he has a right to discontinue it at any time without notice, must continue his service after notice of the death or incapacity of his employer, so far as is necessary to protect from serious injury the interests of the employer's successor in interest, until a reasonable time after notice of the facts has been communicated to such successor. The successor must compensate the employee for such service according to the terms of the contract of employment.

§ 1999. An employment having no specified term may be terminated at the will of either party, on notice to the other, except where otherwise provided by this title.

§ 2000. An employment, even for a specified term, may be terminated at any time by the employer, in case of any wilful breach of duty by the employee in the course of his employment, or in case of his habitual neglect of his duty or continued incapacity to perform it.

§ 2001. An employment, even for a specified term, may be

terminated by the employee at any time, in case of any wilful or permanent breach of the obligations of his employer to him as an employee.

§ 2002. An employee, dismissed by his employer for good cause, is not entitled to any compensation for services rendered since the last day upon which a payment became due to him under the contract.

§ 2003. An employee who quits the service of his employer for good cause is entitled to such proportion of the compensation which would become due in case of full performance, as the services which he has already rendered bear to the services which he was to render as full performance.

CHAPTER II.

PARTICULAR EMPLOYMENTS.

ARTICLE I. MASTER AND SERVANT, §§ 2009-2015.

II. AGENTS, §§ 2019-2022.

III. FACTORS, §§ 2026-2030.

IV. SHIPMASTERS, §§ 2084-2044.

V. MATES AND SEAMEN, §§ 2048-2066

VI. SHIPS' MANAGERS, §§ 2070-2072.

ARTICLE I.

MASTER AND SERVANT.

SECTION 2009. Servant, what.

2010. Term of hiring.

2011. Same.

2012. Renewal of hiring.

2013. Time of service.

2014. Servant to pay over without demand

2015. When servant may be discharged.

2009. A servant is one who is employed to render personal service to his employer, otherwise than in the pursuit of an independent calling, and who in such service remains wholly under the control and direction of the latter, who is his master.

§ 2010. A servant is presumed to have been hired for such length of time as the parties adopt for the estimation of wages. A hiring at a yearly rate is presumed to be for one year; a hiring at a daily rate, for one day; a hiring by piece work, for no specified term.

§ 2011. In the absence of any agreement or custom as to the term of service, the time of payment, or rate or value of wages, a servant is presumed to be hired by the month, at a monthly rate of reasonable wages, to be paid when the service is performed.

§ 2012. Where, after the expiration of an agreement respecting the wages and the term of service, the parties continue the relation of master and servant, they are presumed to have renewed the agreement for the same wages and term of service.

§ 2013. The entire time of a domestic servant belongs to the master; and the time of other servants to such extent as is usual in the business in which they serve, not exceeding in any case ten hours in the day.

§ 2014. A servant must deliver to his master, as soon as with reasonable diligence he can find him, everything that he receives for his account, without demand; but he is not bound, without orders from his master, to send anything to him through another person.

One who appropriates to his own use property of his employer is guilty of embezzlement. Penal Code, § 508.

§ 2015. A master may discharge any servant, other than an apprentice, whether engaged for a fixed term or not:

1. If he is guilty of misconduct in the course of his service, or of gross immorality, though unconnected with the same; or,

2. If, being employed about the person of the master, or in a confidential position, the master discovers that he has been guilty of misconduct, before or after the commencement of his service, of such a nature that, if the master had known or contemplated it, he would not have so employed him.

ARTICLE II.

AGENTS

- SECTION 2019. Agent to conform to his authority
2020. Must keep his principal informed
2021. Collecting agent.
2022. Responsibility of sub-agent.

§ 2019. An agent must not exceed the limits of his actual authority, as defined by the Title on Agency.

§ 2020. An agent must use ordinary diligence to keep his principal informed of his acts in the course of the agency.

§ 2021. An agent employed to collect a negotiable instrument must collect it promptly, and take all measures necessary to charge the parties thereto, in case of its dishonor; and, if it is a bill of exchange, must present it for acceptance with reasonable diligence.

§ 2022. A mere agent of an agent is not responsible as such to the principal of the latter.

ARTICLE III.

FACTORS.

- SECTION 2026. Factor, what.
2027. Obedience required from factor.
2028. Sales on credit.
2029. Liability of factor under guaranty commission.
2030. Factor cannot relieve himself from liability.

§ 2026. A factor is an agent who, in the pursuit of an independent calling, is employed by another to sell property for him, and is vested by the latter with the possession or control of the property, or authorized to receive payment therefor from the purchaser.

2027. A factor must obey the instructions of his principal to the same extent as any other employee, notwithstanding any advances he may have made to his principal upon the property consigned to him, except that if the principal forbids to sell at the market price, he may, nevertheless, sell for

his reimbursement, after giving to his principal reasonable notice of his intention to do so, and of the time and place of sale, and proceeding in all respects as a pledgee.

§ 2028. A factor may sell property consigned to him on such credit as is usual; but, having once agreed with the purchaser upon the term of credit, may not extend it.

§ 2029. A factor who charges his principal with a guaranty commission upon a sale, thereby assumes absolutely to pay the price when it falls due, as if it were a debt of his own, and not as a mere guarantor for the purchaser; but he does not thereby assume any additional responsibility for the safety of his remittance of the proceeds.

§ 2030. A factor who receives property for sale, under a general agreement or usage to guarantee the sales or the remittance of the proceeds, cannot relieve himself from responsibility therefor without the consent of his principal.

ARTICLE IV.

SHIPMASTERS.

- SECTION 2034. Appointment of master.
- 2035. When must be on board.
- 2036. Pilotage.
- 2037. Power of master over seamen.
- 2038. Power of master over passengers.
- 2039. Impressing private stores.
- 2040. When may abandon the ship.
- 2041. Duties on abandonment.
- 2042. When master cannot trade on his own account.
- 2043. Care and diligence.
- 2044. Authority of master.

§ 2034. The master of a ship is appointed by the owner, and holds during his pleasure.

§ 2035. The master of a ship is bound to be always on board when entering or leaving a port, harbor, or river.

§ 2036. On entering or leaving a port, harbor, or river, the master of a ship must take a pilot if one offers himself, and while the pilot is on board the navigation of the ship devolves on him.

Duties of Pilots and Pilot Commissioners, see Pol. Code, §§ 2423-2447

§ 2037. The master of a ship may enforce the obedience of the mate and seamen to his lawful commands by confinement and other reasonable corporal punishment, not prohibited by acts of Congress, being responsible for the abuse of his power.

§ 2038. The master of a ship may confine any person on board, during a voyage, for wilful disobedience to his lawful commands.

§ 2039. If, during a voyage, the ship's supplies fail, the master, with the advice of the officers, may compel persons who have private supplies on board to surrender them for the common want, on payment of their value, or giving security therefor.

§ 2040. The master of a ship must not abandon it during the voyage, without the advice of the other officers.

§ 2041. The master of a ship, upon abandoning it, must carry with him, so far as it is in his power, the money and the most valuable of the goods on board, under penalty of being personally responsible. If the articles thus taken are lost from causes beyond his control, he is exonerated from liability.

§ 2042. The master of a ship, who engages for a common profit on the cargo, must not trade on his own account, and if he does, he must account to his employer for all profits thus made by him.

§ 2043. The master of a ship must use great care and diligence in the performance of his duties, and is responsible for all damage occasioned by his negligence, however slight.

§ 2044. The authority and liability of the master of a ship, as an agent for the owners of the ship and cargo, are regulated by the Title on Agency.

ARTICLE V.

MATES AND SEAMEN.

SECTION 2048. Mate, what.

2049. Seamen, what.

2050. Mate and seamen, how engaged and discharged.

2051. Unseaworthy vessel.

2052. Seamen not to lose wages or lien by agreement.

2053. Special agreement with seamen.

2054. Wages depend on freightage.

2055. When wages, &c., begin.

2056. Wages, where voyage is broken up before departure.

2057. Wrongful discharge.

2058. Wages, when not lost by wreck.

2059. Certificate.

2060. Disabled seamen.

2061. Maintenance of seamen during sickness.

2062. Death on the voyage.

2063. Theft, &c., forfeits wages.

2064. Seamen cannot ship goods.

2065. Embezzlement and injuries. (Repealed.)

2066. Law governing seamen.

§ 2048. The mate of a ship is the officer next in rank to the master, and in case of the master's disability he must take his place. By so doing he does not lose any of his rights as mate.

§ 2049. All persons employed in the navigation of a ship, or upon a voyage, other than the master and mate, are to be deemed seamen within the provisions of this Code.

§ 2050. The mate and seamen of a ship are engaged by the master, and may be discharged by him at any period of the voyage, for wilful and persistent disobedience or gross disqualification, but cannot otherwise be discharged before the termination of the voyage.

§ 2051. A mate or seaman is not bound to go to sea in a ship that is not seaworthy; and if there is reasonable doubt of its seaworthiness, he may refuse to proceed until a proper survey has been had.

§ 2052. A seaman cannot, by reason of any agreement, be deprived of his lien upon the ship, or of any remedy for the recovery of his wages to which he would otherwise have been

entitled. Any stipulation by which he consents to abandon his right to wages in case of the loss of the ship, or to abandon any right he may have or obtain in the nature of salvage, is void.

§ 2053. No special agreement entered into by a seaman can impair any of his rights, or add to any of his obligations, as defined by law, unless he fully understands the effect of the agreement, and receives a fair compensation therefor.

§ 2054. Except as hereinafter provided, the wages of seamen are due when, and so far only as, freightage is earned, unless the loss of freightage is owing to the fault of the owner or master.

§ 2055. The right of a mate or seaman to wages and provisions begins either from the time he begins work, or from the time specified in the agreement for his beginning work, or from his presence on board, whichever first happens.

§ 2056. Where a voyage is broken up before departure of the ship, the seamen must be paid for the time they have served, and may retain for their indemnity such advances as they have received.

§ 2057. When a mate or seaman is wrongfully discharged, or is driven to leave the ship by the cruelty of the master on the voyage, it is then ended with respect to him, and he may thereupon recover his full wages.

§ 2058. In case of loss or wreck of the ship, a seaman is entitled to his wages up to the time of the loss or wreck, whether freightage has been earned or not, if he exerts himself to the utmost to save the ship, cargo, and stores.

§ 2059. A certificate from the master or chief surviving officer of a ship, to the effect that a seaman exerted himself to the utmost to save the ship, cargo, and stores, is presumptive evidence of the fact.

§ 2060. Where a mate or seaman is prevented from rendering service by illness or injury, incurred without his fault, in the discharge of his duty on the voyage, or by being wrongfully discharged, or by a capture of the ship, he is entitled to

wages notwithstanding; but in case of a capture, a ratable deduction for salvage is to be made.

§ 2061. If a mate or seaman becomes sick or disabled during the voyage, without his fault, the expense of furnishing him with suitable medical advice, medicine, attendance, and other provision for his wants, must be borne by the ship till the close of the voyage.

§ 2062. If a mate or seaman dies during the voyage, his personal representatives are entitled to his wages to the time of his death, if he would have been entitled to them had he lived to the end of the voyage.

§ 2063. Desertion of the ship without cause, or a justifiable discharge by the master during the voyage, for misconduct, or a theft of any part of the cargo or appurtenances of the ship, or a wilful injury thereto or to the ship, forfeits all wages due for the voyage to a mate or seaman thus in fault.

§ 2064. A mate or seaman may not, under any pretext, ship goods on his own account without permission from the master.

§ 2065 of said Code is repealed. [In effect July 1, 1874.]

§ 2066. The shipment of officers and seamen, and their rights and duties, are further regulated by acts of Congress.

ARTICLE VI.

SHIPS' MANAGERS.

SECTION 2070. Manager, what.

2071. Duties of manager.

2072. Compensation.

§ 2070. The general agent for the owners, in respect to the care of a ship and freight, is called the manager. If he is a part owner, he is also called the managing owner.

§ 2071. Unless otherwise directed, it is the duty of the manager of a ship to provide for the complete seaworthiness of a ship; to take care of it in port; to see that it is provided

with necessary papers, with a proper master, mate, and crew and supplies of provisions and stores.

§ 2072. A managing owner is presumed to have no right to compensation for his own services.

CHAPTER III.

SERVICE WITHOUT EMPLOYMENT.

SECTION 2078. Voluntary interference with property.
2079. Salvage.

§ 2078. One who officiously, and without the consent of the real or apparent owner of a thing, takes it into his possession for the purpose of rendering a service about it, must complete such service, and use ordinary care, diligence, and reasonable skill about the same. He is not entitled to any compensation for his service or expenses, except that he may deduct actual and necessary expenses incurred by him about such service from any profits which his service has caused the thing to acquire for its owner, and must account to the owner for the residue.

§ 2079. Any person, other than the master, mate, or a seaman thereof, who rescues a ship, her appurtenances, or cargo, from danger, is entitled to a reasonable compensation therefor, to be paid out of the property saved. He has a lien for such claim, which is regulated by the Title on Liens; but no claim for salvage, as such, can accrue against any vessel, or her freight, or cargo, in favor of the owners, officers, or crew of another vessel belonging to the same owners; but the actual cost at the time of the services rendered by one such vessel to another, when in distress, are payable through a general average contribution on the property saved. [In effect July 1, .]

TITLE VII. CARRIAGE.

- CHAPTER I. CARRIAGE IN GENERAL §§ 2085-2090.**
 II. CARRIAGE OF PERSONS, §§ 2100-2104.
 III. CARRIAGE OF PROPERTY, §§ 2110-2155.
 IV. CARRIAGE OF MESSAGES, § 2161.
 V. COMMON CARRIERS, §§ 2168-2209.

CHAPTER I

CARRIAGE IN GENERAL.

- SECTION 2085.** Contract of carriage.
 2086. Different kinds of carriers.
 2087. Marine and inland carriers, what.
 2088. Carriers by sea.
 2089. Obligations of gratuitous carriers.
 2090. Obligations of gratuitous carrier who has begun to carry

§ 2085. The contract of carriage is a contract for the conveyance of property, persons, or messages, from one place to another.

Owner is liable for acts of driver. Pol. Code, § 2936.

§ 2086. Carriage is either :

1. Inland ; or,
2. Marine.

§ 2087. Carriers upon the ocean and upon arms of the sea are marine carriers. All others are inland carriers.

§ 2088. Rights and duties peculiar to carriers by sea are defined by acts of Congress.

§ 2089. Carriers without reward are subject to the same rules as employees without reward, except so far as is otherwise provided by this title.

§ 2090. A carrier without reward, who has begun to per-

form his undertaking, must complete it in like manner as if he had received a reward, unless he restores the person or thing carried to as favorable a position as before he commenced the carriage.

CHAPTER II.

CARRIAGE OF PERSONS.

ARTICLE I. GRATUITOUS CARRIAGE, § 2096.

II. CARRIAGE FOR REWARD, §§ 2100-2104.

ARTICLE I.

GRATUITOUS CARRIAGE OF PERSONS.

SECTION 2096. Degree of care required.

§ 2096. A carrier of persons without reward must use ordinary care and diligence for their safe carriage.

ARTICLE II.

CARRIAGE FOR REWARD.

SECTION 2100. General duties of carrier.

2101. Vehicles.

2102. Not to overload his vehicle.

2103. Treatment of passengers.

2104. Rate of speed and delays.

§ 2100. A carrier of persons for reward must use the utmost care and diligence for their safe carriage, must provide everything necessary for that purpose, and must exercise to that end a reasonable degree of skill.

§ 2101. A carrier of persons for reward is bound to provide vehicles safe and fit for the purposes to which they are put, and is not excused for default in this respect by any degree of care.

§ 2102. A carrier of persons for reward must not overcrowd or overload his vehicle.

§ 2103. A carrier of persons for reward must give to passengers all such accommodations as are usual and reasonable, and must treat them with civility, and give them a reasonable degree of attention.

§ 2104. A carrier of persons for reward must travel at a reasonable rate of speed, and without any unreasonable delay, or deviation from his proper route.

CHAPTER III.

CARRIAGE OF PROPERTY.

ARTICLE I. GENERAL DEFINITIONS, § 2110.

II. OBLIGATIONS OF THE CARRIER, §§ 2114-2122.

III. BILL OF LADING, §§ 2126-2132.

IV. FREIGHTAGE, §§ 2136-2144.

V. GENERAL AVERAGE, §§ 2148-2155.

ARTICLE I.

GENERAL DEFINITIONS.

SECTION 2110. Freight, consignor, &c., what.

§ 2110. Property carried is called freight; the reward, if any, to be paid for its carriage is called freightage; the person who delivers the freight to the carrier is called the consignor; and the person to whom it is to be delivered is called the consignee.

ARTICLE II.

OBLIGATIONS OF THE CARRIER.

SECTION 2114. Care and diligence required of carriers.

2115. Carrier to obey directions.

2116. Conflict of orders.

2117. Stowage, deviation, &c.

2118. Delivery of freight.

2119. Place of delivery.

2120. Obligations of carrier when freight is not delivered to consignee.

2121. How carrier may terminate his liability.

2122. When consignee cannot be found. (Repealed.)

§ 2114. A carrier of property for reward must use at least ordinary care and diligence in the performance of all his duties. A carrier without reward must use at least slight care and diligence.

§ 2115. A carrier must comply with the directions of the consignor or consignee to the same extent that an employee is bound to comply with those of his employer.

§ 2116. When the directions of a consignor and consignee are conflicting, the carrier must comply with those of the consignor in respect to all matters except the delivery of the freight, as to which he must comply with the directions of the consignee, unless the consignor has specially forbidden the carrier to receive orders from the consignee inconsistent with his own.

§ 2117. A marine carrier must not stow freight upon deck during the voyage, except where it is usual to do so, nor make any improper deviation from or delay in the voyage, nor do any other unnecessary act which would avoid an insurance in the usual form upon the freight.

§ 2118. A carrier of property must deliver it to the consignee, at the place to which it is addressed, in the manner usual at that place.

§ 2119. If there is no usage to the contrary at the place of delivery, freight must be delivered as follows :

1. If carried upon a railway owned or managed by the carrier, it may be delivered at the station nearest to the place to which it is addressed ;

2. If carried by sea from a foreign country, it may be delivered at the wharf where the ship moors, within a reasonable distance from the place of address ; or, if there is no wharf, on board a lighter alongside the ship ; or,

3. In other cases, it must be delivered to the consignee or agent, personally, if either can, with reasonable diligence, found.

2120. If, for any reason, a carrier does not deliver freight to the consignee or his agent personally, he must give notice to the consignee of its arrival, and keep the same in custody upon his responsibility as a warehouseman, until the

consignee has had a reasonable time to remove it. If the place of residence or business of the consignee be unknown to the carrier, he may give the notice by letter dropped in the nearest post office. [In effect July 1, 1874.]

56 Cal. 484.

§ 2121. If a consignee does not accept and remove freight within a reasonable time after the carrier has fulfilled his obligation to deliver, or duly offered to fulfil the same, the carrier may exonerate himself from further liability by placing the freight in a suitable warehouse, on storage, on account of the consignee, and giving notice thereof to him. [In effect July 1, 1874.]

§ 2122 of said Code is repealed. [In effect July 1, 1874.]

ARTICLE III.

BILL OF LADING.

SECTION 2126. Bill of lading, what.

2127. Bill of lading negotiable.

2128. Same.

2129. Effect of bill of lading on rights, &c., of carrier.

2130. Bills of lading to be given to consignor.

2131. Carrier exonerated by delivery according to bill of lading.

2132. Carrier may demand surrender of bill of lading before delivery.

§ 2126. A bill of lading is an instrument in writing, signed by a carrier or his agent, describing the freight so as to identify it, stating the name of the consignor, the terms of the contract for carriage, and agreeing or directing that the freight be delivered to the order or assigns of a specified person at a specified place.

Issuing Fictitious Bill of Lading. Penal Code, § 577.

§ 2127. All the title to the freight which the first holder of a bill of lading had when he received it, passes to every subsequent indorsee thereof in good faith and for value, in the ordinary course of business, with like effect and in like manner as in the case of a bill of exchange.

Delivery without cancelling receipt a penal offence. Penal Code § 582.

§ 2128. When a bill of lading is made to "bearer," or

in equivalent terms, a simple transfer thereof, by delivery, conveys the same title as an indorsement.

§ 2129. A bill of lading does not alter the rights or obligations of the carrier, as defined in this chapter, unless it is plainly inconsistent therewith.

§ 2130. A carrier must subscribe and deliver to the consignor, on demand, any reasonable number of bills of lading, of the same tenor, expressing truly the original contract for carriage; and if he refuses to do so, the consignor may take the freight from him, and recover from him, besides, all damage thereby occasioned.

Duplicate receipts must be marked "duplicate." Penal Code § 580.

§ 2131. A carrier is exonerated from liability for freight by delivery thereof, in good faith, to any holder of a bill of lading therefor, properly indorsed, or made in favor of the bearer.

§ 2132. When a carrier has given a bill of lading, or other instrument substantially equivalent thereto, he may require its surrender, or a reasonable indemnity against claims thereon, before delivering the freight.

ARTICLE IV.

FREIGHTAGE.

SECTION 2136. When freightage is to be paid.

2137. Consignor, when liable for freightage.

2138. Consignee when liable.

2139. Natural increase of freight.

2140. Apportionment by contract.

2141. Same.

2142. Apportionment according to distance.

2143. Freight carried further than agreed, &c.

2144. Carrier's lien for freightage.

2136. A carrier may require his freightage to be paid in receiving the freight; but if he does not demand it, he cannot until he is ready to deliver the freight to the consignee.

2137. The consignor of freight is presumed to be liable

for the freightage, but if the contract between him and the carrier provides that the consignee shall pay it, and the carrier allows the consignee to take the freight, he cannot afterwards recover the freightage from the consignor.

§ 2138. The consignee of freight is liable for the freightage, if he accepts the freight with notice of the intention of the consignor that he should pay it.

§ 2139. No freightage can be charged upon the natural increase of freight.

§ 2140. If freightage is apportioned by a bill of lading or other contract made between a consignor and carrier, the carrier is entitled to payment, according to the apportionment, for so much as he delivers.

§ 2141. If a part of the freight is accepted by a consignee, without a specific objection that the rest is not delivered, the freightage must be apportioned and paid as to that part, though not apportioned in the original contract.

§ 2142. If a consignee voluntarily receives freight at a place short of the one appointed for delivery, the carrier is entitled to a just proportion of the freightage, according to distance. If the carrier, being ready and willing, offers to complete the transit, he is entitled to the full freightage. If he does not thus offer completion, and the consignee receives the freight only from necessity, the carrier is not entitled to any freightage.

§ 2143. If freight is carried further, or more expeditiously, than was agreed upon by the parties, the carrier is not entitled to additional compensation, and cannot refuse to deliver it, on the demand of the consignee, at the place and time of its arrival.

§ 2144. A carrier has a lien for freightage, which is regulated by the Title on Liens.

ARTICLE V.

GENERAL AVERAGE.

SECTION 2148. Jettison and general average, what.

2149. Order of jettison.

2150. By whom made.

2151. Loss, how borne.

2152. General average loss, how adjusted.

2153. Values, how ascertained.

2154. Things stowed on deck.

2155. Application of the foregoing rules.

§ 2148. A carrier by water may, when in case of extreme peril it is necessary for the safety of the ship or cargo, throw overboard, or otherwise sacrifice, any or all the cargo or appurtenances of the ship. Throwing property overboard for such purpose is called jettison, and the loss incurred thereby is called a general average loss.

§ 2149. A jettison must begin with the most bulky and least valuable articles, so far as possible.

§ 2150. A jettison can be made only by authority of the master of a ship, except in case of his disability, or of an overruling necessity, when it may be made by any other person.

§ 2151. The loss incurred by a jettison, when lawfully made, must be borne in due proportion by all that part of the ship, appurtenances, freightage, and cargo for the benefit of which the sacrifice is made, as well as by the owner of the thing sacrificed.

§ 2152. The proportions in which a general average loss is to be borne must be ascertained by an adjustment, in which the owner of each separate interest is to be charged with such proportion of the value of the thing lost as the value of his part of the property affected bears to the value of the whole. But an adjustment made at the end of the voyage, if valid here, is valid everywhere.

§ 2153. In estimating values for the purpose of a general average, the ship and appurtenances must be valued as at the end of the voyage, the freightage at one half the amount due

on delivery, and the cargo as at the time and place of its discharge; adding, in each case, the amount made good by contribution.

§ 2154. The owner of things stowed on deck, in case of their jettison, is entitled to the benefit of a general average contribution only in case it is usual to stow such things on deck upon such a voyage.

§ 2155. The rules herein stated concerning jettison are equally applicable to every other voluntary sacrifice of property on a ship, or expense necessarily incurred, for the preservation of the ship and cargo from extraordinary perils.

CHAPTER IV.

CARRIAGE OF MESSAGES.

SECTION 2161. Obligations of carrier of messages.

2162. Degree of care and diligence required.

§ 2161. A carrier of messages for reward, other than by telegraph, must deliver them at the place to which they are addressed, or to the person for whom they are intended. Such carrier, by telegraph, must deliver them at such place and to such person, provided the place of address, or the person for whom they are intended, is within a distance of two miles from the main office of the carrier in the city or town to which the messages are transmitted, and the carrier is not required, in making the delivery, to pay on his route toll or ferriage; but for any distance beyond one mile from such office, compensation may be charged for a messenger employed by the carrier. [In effect July 1, 1874.]

Penal Code, § 638.

§ 2162. A carrier of messages for reward must use great care and diligence in the transmission and delivery of messages. [In effect July 1, 1874.]

CHAPTER V.

COMMON CARRIERS.

ARTICLE I. COMMON CARRIERS IN GENERAL, §§ 2168-2177.

II. COMMON CARRIERS OF PERSONS, §§ 2180-2191.

III. COMMON CARRIERS OF PROPERTY, §§ 2194-2204.

IV. COMMON CARRIERS OF MESSAGES, §§ 2207-2209.

ARTICLE I.

COMMON CARRIERS IN GENERAL.

- SECTION 2168.** Common carrier, what.
2169. Obligation to accept freight.
2170. Obligation not to give preference.
2171. What preferences he must give.
2172. Starting.
2173. Compensation.
2174. Obligations of carrier altered only by agreement.
2175. Certain agreements void.
2176. Effect of written contract.
2177. When not liable for loss.

§ 2168. Every one who offers to the public to carry persons, property, or messages, excepting only telegraphic messages, is a common carrier of whatever he thus offers to carry. [In effect July 1, 1874.]

Polit. Code, § 2986; Penal Code, § 365.

§ 2169. A common carrier must, if able to do so, accept and carry whatever is offered to him, at a reasonable time and place, of a kind that he undertakes or is accustomed to carry.

§ 2170. A common carrier must not give preference, in time, price, or otherwise, to one person over another. Every common carrier of passengers by railroad, or by vessel plying upon waters lying wholly within this State, shall establish a schedule time for the starting of trains or vessels from their respective stations or wharves, of which public notice shall be given, and shall, weather permitting, except in case of accident or detention caused by connecting lines, start their said trains or vessels at or within ten minutes after the schedule time so established and notice given, under a penalty of two hundred and fifty dollars for each neglect so to do, to be recovered by action before any court of competent jurisdiction, upon complaint filed by the district attorney of the county in the name of the people, and paid into the common school fund of the said county. [In effect April 2, 1880.]

§ 2171. A common carrier must always give a preference in time, and may give a preference in price, to the United States and to this State.

§ 2172. A common carrier must start at such time and

place as he announces to the public, unless detained by accident or the elements, or in order to connect with carriers on other lines of travel. [In effect July 1, 1874.]

§ 2173. A common carrier is entitled to a reasonable compensation and no more, which he may require to be paid in advance. If payment thereof is refused, he may refuse to carry.

§ 2174. The obligations of a common carrier cannot be limited by general notice on his part, but may be limited by special contract. [In effect July 1, 1874.]

§ 2175. A common carrier cannot be exonerated, by any agreement made in anticipation thereof, from liability for the gross negligence, fraud, or wilful wrong of himself or his servants.

§ 2176. A passenger, consignor, or consignee, by accepting a ticket, bill of lading, or written contract for carriage, with a knowledge of its terms, assents to the rate of hire, the time, place, and manner of delivery therein stated; and also to the limitation stated therein upon the amount of the carrier's liability in case property carried in packages, trunks, or boxes, is lost or injured, when the value of such property is not named; and also to the limitation stated therein to the carrier's liability for loss or injury to live animals carried. But his assent to any other modification of the carrier's obligations contained in such instrument can be manifested only by his signature to the same. [In effect July 1, 1874.]

§ 2177. A common carrier is not responsible for loss or miscarriage of a letter, or package having the form of a letter, containing money or notes, bills of exchange, or other papers of value, unless he be informed at the time of its receipt of the value of its contents. [In effect July 1, 1874.]

ARTICLE II.

COMMON CARRIERS OF PERSONS.

- SECTION 2180. Obligation to carry luggage.
2181. Luggage, what.
2182. Liability for luggage

SECTION 2183. Luggage, how carried and delivered.

2184. Obligation to provide vehicles.

2185. Seats for passengers.

2186. Regulations for conduct of business.

2187. Fare, when payable.

2188. Ejection of passengers.

2189. Passenger who has not paid fare.

2190. Fare not payable after ejection.

2191. Carrier's lien.

§ 2180. A common carrier of persons, unless his vehicle is fitted for the reception of persons exclusively, must receive and carry a reasonable amount of luggage for each passenger without charge, except for an excess of weight over one hundred pounds to a passenger: *provided*, that if such carrier be a proprietor of a stage line, he may not receive and carry for each passenger by such stage line, without charge, more than sixty pounds of luggage. [In effect May 8, 1878.]

§ 2181. Luggage may consist of any articles intended for the use of a passenger while travelling, or for his personal equipment.

§ 2182. The liability of a carrier for luggage received by him with a passenger is the same as that of a common carrier of property.

§ 2183. A common carrier must deliver every passenger's luggage, whether within the prescribed weight or not, immediately upon the arrival of the passenger at his destination; and, unless the vehicle would be overcrowded or overloaded thereby, must carry it on the same vehicle by which he carries the passenger to whom it belonged, except that where luggage is transported by rail, it must be checked and carried in a regular baggage car; and whenever passengers neglect or refuse to have their luggage so checked and transported, it is carried at their risk. [In effect July 1, 1874.]

§ 2184. A common carrier of persons must provide a sufficient number of vehicles to accommodate all the passengers who can be reasonably expected to require carriage at any one time.

§ 2185. A common carrier of persons must provide every passenger with a seat. He must not overload his vehicle by receiving and carrying more passengers than its rated capacity allows.

§ 2186. A common carrier of persons may make rules for the conduct of his business, and may require passengers to conform to them, if they are lawful, public, uniform in their application, and reasonable.

§ 2187. A common carrier may demand the fare of passengers, either at starting or at any subsequent time.

§ 2188. A passenger who refuses to pay his fare or to conform to any lawful regulation of the carrier, may be ejected from the vehicle by the carrier. But this must be done with as little violence as possible, and at any usual stopping place or near some dwelling-house.

§ 2189. A passenger upon a railroad train who has not paid his fare before entering the train, if he has been afforded an opportunity to do so, must, upon demand, pay ten per cent. in addition to the regular rate.

§ 2190. After having ejected a passenger, a carrier has no right to require the payment of any part of his fare.

§ 2191. A common carrier has a lien upon the luggage of a passenger for the payment of such fare as he is entitled to from him. This lien is regulated by the Title on Liens.

Penalty for overcharges. Penal Code, § 525.

ARTICLE III.

COMMON CARRIERS OF PROPERTY.

REASON 2194. Liability of inland carriers for loss

2195. When exemptions do not apply.

2196. Liability for delay.

2197. Liability of marine carriers.

2198. Same.

2199. Perils of sea, what.

2200. Consignor of valuables to declare their nature

2201. Delivery of freight beyond usual route.

2202. Proof to be given in case of loss.

2203. Carrier's services, other than carriage and delivery

2204. Sale of perishable property for freight.

§ 2194. Unless the consignor accompanies the freight and retains exclusive control thereof, an inland common carrier of property is liable, from the time that he accepts until he re-

lieves himself from liability pursuant to sections 2118 to 2122, for the loss or injury thereof from any cause whatever, except:

1. An inherent defect, vice, or weakness, or a spontaneous action, of the property itself;
2. The act of a public enemy of the United States, or of this State;
3. The act of the law; or,
4. Any irresistible superhuman cause.

§ 2195. A common carrier is liable, even in the cases excepted by the last section, if his ordinary negligence exposes the property to the cause of the loss.

§ 2196. A common carrier is liable for delay only when it is caused by his want of ordinary care and diligence. [In effect July 1, 1874.]

§ 2197. A marine carrier is liable in like manner as an inland carrier, except for loss or injury caused by the perils of the sea or fire.

§ 2198. The liability of a common carrier by sea is further regulated by acts of Congress.

§ 2199. Perils of the sea are from:

1. Storms and waves;
2. Rocks, shoals, and rapids;
3. Other obstacles, though of human origin;
4. Changes of climate;
5. The confinement necessary at sea;
6. Animals peculiar to the sea; and,
7. All other dangers peculiar to the sea.

§ 2200. A common carrier of gold, silver, platina, or precious stones, or of imitations thereof, in a manufactured or unmanufactured state; of timepieces of any description; of negotiable paper or other valuable writings; of pictures, glass, or chinaware; of statuary, silk, or laces; or of plated ware of any kind, is not liable for more than fifty dollars upon the loss or injury of any one package of such articles, unless he has notice, upon his receipt thereof, by mark upon the package or otherwise, of the nature of the freight; nor is such carrier liable upon any package carried for more than the value of the

articles named in the receipt or the bill of lading. [In effect July 1, 1874.]

§ 2201. If a common carrier accepts freight for a place beyond his usual route, he must, unless he stipulates otherwise, deliver it at the end of his route in that direction to some other competent carrier carrying to the place of address, or connected with those who thus carry, and his liability ceases upon making such delivery.

§ 2202. If freight addressed to a place beyond the usual route of the common carrier who first received it is lost or injured, he must, within a reasonable time after demand, give satisfactory proof to the consignor that the loss or injury did not occur while it was in his charge, or he will be himself liable therefor.

§ 2203. In respect to any service rendered by a common carrier about freight, other than its carriage and delivery, his rights and obligations are defined by the Titles on Deposit and Service.

§ 2204. If, from any cause other than want of ordinary care and diligence on his part, a common carrier is unable to deliver perishable property transported by him, and collect his charges thereon, he may cause the property to be sold in open market, to satisfy his lien for freightage. [In effect July 1, 1874.]

Penalty for overcharges. Penal Code, § 525.

ARTICLE IV.

COMMON CARRIERS OF MESSAGES.

SECTION 2207. Order of transmission of telegraphic messages.

2208. Order in other cases.

2209. Damages when message is refused or postponed.

§ 2207. A carrier of messages by telegraph must, if it is practicable, transmit every such message immediately upon its receipt. But if this is not practicable, and several messages accumulate upon his hands, he must transmit them in the following order:

1. Messages from public agents of the United States or of this State, on public business;

2. Messages intended in good faith for immediate publication in newspapers, and not for any secret use ;

3. Messages giving information relating to the sickness or death of any person ;

4. Other messages in the order in which they were received.

Penal Code, § 638.

§ 2208. A common carrier of messages, otherwise than by telegraph, must transmit messages in the order in which he receives them, except messages from agents of the United States or of this State, on public business, to which he must always give priority. But he may fix upon certain times for the simultaneous transmission of messages previously received.

§ 2209. Every person whose message is refused or postponed, contrary to the provisions of this chapter, is entitled to recover from the carrier his actual damages, and fifty dollars in addition thereto.

TITLE VIII.

TRUST.

CHAPTER I. TRUSTS IN GENERAL, §§ 2215-2244.

II. TRUSTS FOR THE BENEFIT OF THIRD PERSONS, §§ 2250-2289.

CHAPTER I.

TRUSTS IN GENERAL.

ARTICLE I. NATURE AND CREATION OF A TRUST, §§ 2215-2224.

II. OBLIGATIONS OF TRUSTEES, §§ 2228-2239.

III. OBLIGATIONS OF THIRD PERSONS, §§ 2243-2244.

ARTICLE I.

NATURE AND CREATION OF A TRUST.

SECTION 2215. Trusts classified.

2216. Voluntary trust, what.

2217. Involuntary trust, what

SECTION 2218. Parties to the contract.

2219. What constitutes one a trustee.

2220. For what purpose a trust may be created.

2221. Voluntary trust, how created as to trustor.

2222. How created as to trustee.

2223. Involuntary trustee, who is.

2224. Involuntary trust resulting from negligence, &c.

§ 2215. A trust is either :

1. Voluntary ; or,
2. Involuntary.

§ 2216. A voluntary trust is an obligation arising out of a personal confidence reposed in, and voluntarily accepted by, one for the benefit of another.

§ 2217. An involuntary trust is one which is created by operation of law.

§ 2218. The person whose confidence creates a trust is called the trustor ; the person in whom the confidence is reposed is called the trustee ; and the person for whose benefit the trust is created is called the beneficiary.

§ 2219. Every one who voluntarily assumes a relation of personal confidence with another is deemed a trustee, within the meaning of this chapter, not only as to the person who reposes such confidence, but also as to all persons of whose affairs he thus acquires information which was given to such person in the like confidence, or over whose affairs he, by such confidence, obtains any control.

§ 2220. A trust may be created for any purpose for which a contract may lawfully be made, except as otherwise prescribed by the Titles on Uses and Trusts and on Transfers.

§ 2221. Subject to the provisions of section 852, a voluntary trust is created, as to the trustor and beneficiary, by any words or acts of the trustor, indicating with reasonable certainty .

1. An intention on the part of the trustor to create a trust and,

2. The subject, purpose, and beneficiary of the trust.

58 Cal. 483.

§ 2222. Subject to the provisions of section 852, a voluntary trust is created, as to the trustee, by any words or acts indicating, with reasonable certainty :

1. His acceptance of the trust, or his acknowledgment, made upon sufficient consideration, of its existence; and,
2. The subject, purpose, and beneficiary of the trust.

§ 2223. One who wrongfully detains a thing is an involuntary trustee thereof, for the benefit of the owner.

§ 2224. One who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act, is, unless he has some other and better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it.

58 Cal. 116, 621.

ARTICLE II.

OBLIGATIONS OF TRUSTEES.

SECTION 2228. Trustee's obligation to good faith.

2229. Trustee not to use property for his own profit.

2230. Certain transactions forbidden.

2231. Trustee's influence not to be used for his advantage.

2232. Trustee not to assume a trust adverse to interest of beneficiary.

2233. To disclose adverse interest.

2234. Trustee guilty of fraud, when.

2235. Presumption against trustees.

2236. Trustee mingling trust property with his own.

2237. Measure of liability for breach of trust.

2238. Same.

2239. Co-trustees, how far liable for each other.

§ 2228. In all matters connected with his trust, a trustee is bound to act in the highest good faith toward his beneficiary, and may not obtain any advantage therein over the latter by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind.

§ 2229. A trustee may not use or deal with the trust property for his own profit, or for any other purpose unconnected with the trust, in any manner.

§ 2230. Neither a trustee nor any of his agents may take part in any transaction concerning the trust in which he or any one for whom he acts as agent has an interest, present or contingent, adverse to that of his beneficiary, except as follows:

1. When the beneficiary, having capacity to contract, with a full knowledge of the motives of the trustee, and of all other facts concerning the transaction which might affect his own decision, and without the use of any influence on the part of the trustee, permits him to do so ;

2. When the beneficiary not having capacity to contract the proper court, upon the like information of the facts, grants the like permission ; or,

3. When some of the beneficiaries having capacity to contract, and some not having it, the former grant permission for themselves, and the proper court for the latter, in the manner above prescribed.

54 Cal. 106.

§ 2231. A trustee may not use the influence which his position gives him to obtain any advantage from his beneficiary.

§ 2232. No trustee, so long as he remains in the trust, may undertake another trust adverse in its nature to the interest of his beneficiary in the subject of the trust, without the consent of the latter.

§ 2233. If a trustee acquires any interest, or becomes charged with any duty, adverse to the interest of his beneficiary in the subject of the trust, he must immediately inform the latter thereof, and may be at once removed.

§ 2234. Every violation of the provisions of the preceding sections of this article is a fraud against the beneficiary of the trust.

52 Cal. 406.

§ 2235. All transactions between a trustee and his beneficiary during the existence of the trust, or while the influence acquired by the trustee remains, by which he obtains any advantage from his beneficiary, are presumed to be entered into by the latter without sufficient consideration, and under undue influence.

§ 2236. A trustee who wilfully and unnecessarily mingles the trust property with his own, so as to constitute himself in appearance its absolute owner, is liable for its safety in all events.

§ 2237. A trustee who uses or disposes of the trust prop-

erty, contrary to section 2229, may, at the option of the beneficiary, be required to account for all profits so made, or to pay the value of its use, and, if he has disposed thereof, to replace it, with its fruits, or to account for its proceeds, with interest.

§ 2238. A trustee who uses or disposes of the trust property in any manner not authorized by the trust, but in good faith, and with intent to serve the interests of the beneficiary, is liable only to make good whatever is lost to the beneficiary by his error.

§ 2239. A trustee is responsible for the wrongful acts of a co-trustee to which he consented, or which, by his negligence, he enabled the latter to commit, but for no others.

ARTICLE III.

OBLIGATIONS OF THIRD PERSONS.

Section 2243. Third person, when involuntary trustee.

2244. When third person must see to application of trust property.

§ 2243. Every one to whom property is transferred in violation of a trust, holds the same as an involuntary trustee under such trust, unless he purchased it in good faith, and for a valuable consideration.

§ 2244. One who actually and in good faith transfers any money or other property to a trustee, as such, is not bound to see to the application thereof, and his rights can in no way be prejudiced by a misapplication thereof by the trustee. Other persons must, at their peril, see to the proper application of money or other property paid or delivered by them.

CHAPTER II

TRUSTS FOR THE BENEFIT OF THIRD PERSONS

ARTICLE I. NATURE AND CREATION OF THE TRUST. §§ 2250-2254.

II. OBLIGATIONS OF TRUSTEES, §§ 2258-2263.

III. POWERS OF TRUSTEES, §§ 2267-2269.

IV. RIGHTS OF TRUSTEES, §§ 2273-2275.

V. TERMINATION OF THE TRUST, §§ 2279-2283.

VI. SUCCESSION OR APPOINTMENT OF NEW TRUSTEES, §§ 2287-2289

ARTICLE I.

NATURE AND CREATION OF THE TRUST.

SECTION 2250. Who are trustees within scope of this chapter.

2251. Creation of trust.

2252. Trustees appointed by court.

2253. Declaration of trust.

2254. Same.

§ 2250. The provisions of this chapter apply only to express trusts, created for the benefit of another than the trustor, and in which the title to the trust property is vested in the trustee; not including, however, those of executors, administrators, and guardians, as such.

§ 2251. The mutual consent of a trustor and trustee creates a trust of which the beneficiary may take advantage at any time prior to its rescission.

§ 2252. When a trustee is appointed by a court or public officer, as such, such court or officer is the trustor, within the meaning of the last section.

§ 2253. The nature, extent, and object of a trust are expressed in the declaration of trust.

§ 2254. All declarations of a trustor to his trustees, in relation to the trust, before its acceptance by the trustees, or any of them, are to be deemed part of the declaration of the trust, except that when a declaration of trust is made in writing, all previous declarations by the same trustor are merged therein.

ARTICLE II.

OBLIGATIONS OF TRUSTEES.

- SECTION 2258.** Trustees must obey declaration of trust.
2259. Degree of care and diligence in execution of trust.
2260. Duty of trustee as to appointment of successor.
2261. Investment of money by trustee.
2262. Interest, simple or compound, on omission to invest trust moneys.
2263. Purchase by trustee of claims against trust fund.

§ 2258. A trustee must fulfil the purpose of the trust, as declared at its creation, and must follow all the directions of the trustor given at that time, except as modified by the consent of all parties interested, in the same manner, and to the same extent, as an employee.

§ 2259. A trustee, whether he receives any compensation or not, must use at least ordinary care and diligence in the execution of his trust.

§ 2260. If a trustee procures or assents to his discharge from his office, before his trust is fully executed, he must use at least ordinary care and diligence to secure the appointment of a trustworthy successor before accepting his own final discharge.

§ 2261. A trustee must invest money received by him under the trust, as fast as he collects a sufficient amount, in such manner as to afford reasonable security and interest for the same.

§ 2262. If a trustee omits to invest the trust moneys according to the last section, he must pay simple interest thereon, if such omission is negligent merely, and compound interest if it is wilful.

2263. A trustee cannot enforce any claim against the st property which he purchases after or in contemplation his appointment as trustee ; but he may be allowed, by any competent court, to charge to the trust property what he has in good faith paid for the claim, upon discharging the same.

ARTICLE III.

POWERS OF TRUSTEES.

SECTION 2267. Trustee's powers as agent.

2268. All must act.

2269. Discretionary powers.

§ 2267. A trustee is a general agent for the trust property. His authority is such as is conferred upon him by the declaration of trust and by this chapter, and none other. His acts, within the scope of his authority, bind the trust property to the same extent as the acts of an agent bind his principal.

§ 2268. Where there are several co-trustees, all must unite in any act to bind the trust property, unless the declaration of trust otherwise provides.

§ 2269. A discretionary power conferred upon a trustee is presumed not to be left to his arbitrary discretion, but may be controlled by the proper court if not reasonably exercised, unless an absolute discretion is clearly conferred by the declaration of trust.

ARTICLE IV.

RIGHTS OF TRUSTEES.

SECTION 2273. Indemnification of trustee

2274. Compensation of trustee.

2275. Involuntary trustee.

§ 2273. A trustee is entitled to the repayment, out of the trust property, of all expenses actually and properly incurred by him in the performance of his trust. He is entitled to the repayment of even unlawful expenditures, if they were productive of actual benefit to the estate.

§ 2274. When a declaration of trust is silent upon the subject of compensation, the trustee is entitled to the same compensation as an executor. If it specifies the amount of his compensation, he is entitled to the amount thus specified and no more. If it directs that he shall be allowed a compensation, but does not specify the rate or amount, he is en-

titled to such compensation as may be reasonable under the circumstances.

56 Cal. 628.

§ 2275. An involuntary trustee, who becomes such through his own fault, has none of the rights mentioned in this article.

ARTICLE V.

TERMINATION OF THE TRUST.

SECTION 2279. Trust, how extinguished.

2280. Not revocable.

2281. Trustee's office, how vacated

2282. Trustee, how discharged.

2283. Removal by District Court

§ 2279. A trust is extinguished by the entire fulfilment of its object, or by such object becoming impossible or unlawful.

§ 2280. A trust cannot be revoked by the trustor after its acceptance, actual or presumed, by the trustee and beneficiaries, except by the consent of all the beneficiaries, unless the declaration of trust reserves a power of revocation to the trustor, and in that case the power must be strictly pursued.

§ 2281. The office of a trustee is vacated :

1. By his death ; or,
2. By his discharge.

§ 2282. A trustee can be discharged from his trust only as follows :

1. By the extinction of the trust ;
2. By the completion of his duties under the trust ;
3. By such means as may be prescribed by the declaration of trust ;
4. By the consent of the beneficiary, if he had capacity to contract ;
5. By the judgment of a competent tribunal, in a direct proceeding for that purpose, that he is of unsound mind ; or,
6. By the Superior Court. [In effect February 15, 1883.]

§ 2283. The Superior Court may remove any trustee who has violated or is unfit to execute the trust ; or may accept the resignation of a trustee. [In effect April 5, 1880.]

ARTICLE VI.

SUCCESSION OR APPOINTMENT OF NEW TRUSTEES.

SECTION 2287. Vacant trusteeship filled by court.

2288. Survivorship between co-trustees.

2289. District Court as trustee.

§ 2287. The Superior Court may appoint a trustee whenever there is a vacancy, and the declaration of trust does not provide a practicable method of appointment. [In effect April 5, 1880.]

§ 2288. On the death, renunciation, or discharge of one of several co-trustees, the trust survives to the others.

§ 2289. When a trust exists without any appointed trustee, or where all the trustees renounce, die, or are discharged, the Superior Court of the county where the trust property, or some portion thereof, is situated must appoint another trustee, and direct the execution of the trust. The court may, in its discretion, appoint the original number, or any less number of trustees. [In effect April 5, 1880.]

TITLE IX.

AGENCY.

CHAPTER I. AGENCY IN GENERAL, §§ 2295-2356.

II. PARTICULAR AGENCIES, §§ 2362-2389.

CHAPTER I.

AGENCY IN GENERAL.

ARTICLE. I. DEFINITION OF AGENCY, §§ 2295-2300.

II. AUTHORITY OF AGENTS, §§ 2304-2326.

III. MUTUAL OBLIGATIONS OF PRINCIPALS AND THIRD PERSONS
§§ 2330-2339.

IV. OBLIGATIONS OF AGENTS TO THIRD PERSONS, §§ 2342-2345.

V. DELEGATION OF AGENCY, §§ 2349-2351.

VI. TERMINATION OF AGENCY, §§ 2355-2356.

ARTICLE I.

DEFINITION OF AGENCY.

- SECTION 2295.** Agency, what.
2296. Who may appoint, and who may be an agent.
2297. Agents, general or special.
2298. Agency, actual or ostensible.
2299. Actual agency.
2300. Ostensible agency.

§ 2295. An agent is one who represents another, called the principal, in dealings with third persons. Such representation is called agency.

§ 2296. Any person having capacity to contract may appoint an agent, and any person may be an agent.

§ 2297. An agent for a particular act or transaction is called a special agent. All others are general agents.

§ 2298. An agency is either actual or ostensible.

§ 2299. An agency is actual when the agent is really employed by the principal.

§ 2300. An agency is ostensible when the principal intentionally, or by want of ordinary care, causes a third person to believe another to be his agent who is not really employed by him.

ARTICLE II.

AUTHORITY OF AGENTS.

- SECTION 2304.** What authority may be conferred.
2305. Agent may perform acts required of principal by Code.
2306. Agent cannot have authority to defraud principal.
2307. Creation of agency.
2308. Consideration unnecessary.
2309. Form of authority.
2310. Ratification of agent's act.
2311. Ratification of part of a transaction.
2312. When ratification void.
2313. Ratification not to work injury to third persons.
2314. Rescission of ratification.
2315. Measure of agent's authority.
2316. Actual authority, what.

SECTION 2317. Ostensible authority, what.

2318. Agent's authority as to persons having notice of restrictions upon it.

2319. Agent's necessary authority.

2320. Agent's power to disobey instructions.

2321. Authority to be construed by its specific, rather than by its general terms.

2322. Exceptions to general authority.

2323. What included in authority to sell personal property.

2324. What included in authority to sell real property.

2325. Authority of general agent to receive price of property.

2326. Authority of special agent to receive price.

§ 2304. An agent may be authorized to do any acts which his principal might do, except those to which the latter is bound to give his personal attention.

§ 2305. Every act which, according to this Code, may be done by or to any person, may be done by or to the agent of such person for that purpose, unless a contrary intention clearly appears.

§ 2306. An agent can never have authority, either actual or ostensible, to do an act which is, and is known or suspected by the person with whom he deals to be, a fraud upon the principal.

§ 2307. An agency may be created, and an authority may be conferred, by a precedent authorization or a subsequent ratification.

§ 2308. A consideration is not necessary to make an authority, whether precedent or subsequent, binding upon the principal.

§ 2309. An oral authorization is sufficient for any purpose, except that an authority to enter into a contract required by law to be in writing can only be given by an instrument in writing.

§ 2310. A ratification can be made only in the manner that would have been necessary to confer an original authority for the act ratified, or where an oral authorization would suffice, by accepting or retaining the benefit of the act, with notice thereof.

§ 2311. Ratification of part of an indivisible transaction is a ratification of the whole.

§ 2312. A ratification is not valid unless, at the time of ratifying the act done, the principal has power to confer authority for such an act.

§ 2313. No unauthorized act can be made valid, retroactively, to the prejudice of third persons, without their consent.

§ 2314. A ratification may be rescinded when made without such consent as is required in a contract, or with an imperfect knowledge of the material facts of the transaction ratified, but not otherwise.

§ 2315. An agent has such authority as the principal, actually or ostensibly, confers upon him.

§ 2316. Actual authority is such as a principal intentionally confers upon the agent, or intentionally, or by want of ordinary care, allows the agent to believe himself to possess.

§ 2317. Ostensible authority is such as a principal, intentionally or by want of ordinary care, causes or allows a third person to believe the agent to possess.

§ 2318. Every agent has actually such authority as is defined by this title, unless specially deprived thereof by his principal, and has even then such authority ostensibly, except as to persons who have actual or constructive notice of the restriction upon his authority.

§ 2319. An agent has authority :

1. To do everything necessary or proper and usual, in the ordinary course of business, for effecting the purpose of his agency; and,

2. To make a representation respecting any matter of fact, not including the terms of his authority, but upon which his right to use his authority depends, and the truth of which cannot be determined by the use of reasonable diligence on the part of the person to whom the representation is made.

§ 2320. An agent has power to disobey instructions in dealing with the subject of the agency, in cases where it is early for the interest of his principal that he should do so, and there is not time to communicate with the principal.

§ 2321. When an authority is given partly in general and partly in specific terms, the general authority gives no higher powers than those specifically mentioned.

§ 2322. An authority expressed in general terms, however broad, does not authorize an agent :

1. To act in his own name, unless it is the usual course of business to do so ;

2. To define the scope of his agency ; or,

3. To do any act which a trustee is forbidden to do by Article II., Chapter I., of the last Title. 2. 2 2 8 21-249

§ 2323. An authority to sell personal property includes authority to warrant the title of the principal, and the quality and quantity of the property.

§ 2324. An authority to sell and convey real property includes authority to give the usual covenants of warranty.

§ 2325. A general agent to sell, who is intrusted by the principal with the possession of the thing sold, has authority to receive the price.

§ 2326. A special agent to sell has authority to receive the price on delivery of the thing sold, but not afterwards.

ARTICLE III.

MUTUAL OBLIGATIONS OF PRINCIPALS AND THIRD PERSONS.

SECTION 2330. Principal, how affected by acts of agent within the scope of his authority.

2331. Principal, when bound by incomplete execution of authority.

2332. Notice to agent, when notice to principal.

2333. Obligation of principal when agent exceeds his authority.

2334. For acts done under a merely ostensible authority.

2335. When exclusive credit is given to agent:

2336. Rights of person who deals with agent without knowledge of agency.

2337. Instrument intended to bind principal does bind him.

2338. Principal's responsibility for agent's negligence or omission.

2339. Principal's responsibility for wrongs wilfully committed by the agent.

§ 2330. An agent represents his principal for all purposes within the scope of his actual or ostensible authority, and all the rights and liabilities which would accrue to the agent from transactions within such limit, if they had been entered into on his own account, accrue to the principal.

§ 2331. A principal is bound by an incomplete execution of an authority, when it is consistent with the whole purpose and scope thereof, but not otherwise.

§ 2332. As against a principal, both principal and agent are deemed to have notice of whatever either has notice of, and ought, in good faith, and the exercise of ordinary care and diligence, to communicate to the other.

57 Cal. 399.

§ 2333. When an agent exceeds his authority, his principal is bound by his authorized acts so far only as they can be plainly separated from those which are unauthorized.

§ 2334. A principal is bound by acts of his agent; under a merely ostensible authority, to those persons only who have in good faith, and without ordinary negligence, incurred a liability or parted with value, upon the faith thereof.

§ 2335. If exclusive credit is given to an agent by the person dealing with him, his principal is exonerated by payment or other satisfaction made by him to his agent in good faith, before receiving notice of the creditor's election to hold him responsible.

§ 2336. One who deals with an agent without knowing or having reason to believe that the agent acts as such in the transaction, may set off against any claim of the principal arising out of the same, all claims which he might have set off against the agent before notice of the agency.

§ 2337. An instrument within the scope of his authority, by which an agent intends to bind his principal, does bind him if such intent is plainly inferrible from the instrument itself.

§ 2338. Unless required by or under the authority of law to employ that particular agent, a principal is responsible to third persons for the negligence of his agent in the transac-

tion of the business of the agency, including wrongful acts committed by such agent in and as a part of the transaction of such business, and for his wilful omission to fulfil the obligations of the principal.

§ 2339. A principal is responsible for no other wrongs committed by his agent than those mentioned in the last section, unless he has authorized or ratified them, even though they are committed while the agent is engaged in his service.

ARTICLE IV.

OBLIGATIONS OF AGENTS TO THIRD PERSONS.

SECTION 2342. Warranty of authority.

2342. Agent's responsibility to third persons.

2344. Obligation of agent to surrender property to third person.

2345. Agent not having capacity to contract.

§ 2342. One who assumes to act as an agent thereby warrants, to all who deal with him in that capacity, that he has the authority which he assumes.

§ 2343. One who assumes to act as an agent is responsible to third persons as a principal for his acts in the course of his agency, in any of the following cases, and in no others:

1. When, with his consent, credit is given to him personally in a transaction;
2. When he enters into a written contract in the name of his principal, without believing, in good faith, that he has authority to do so; or,
3. When his acts are wrongful in their nature.

§ 2344. If an agent receives anything for the benefit of his principal, to the possession of which another person is entitled, he must, on demand, surrender it to such person, or so much of it as he has under his control at the time of demand, on being indemnified for any advance which he has made to his principal, in good faith, on account of the same; and is responsible therefor, if, after notice from the owner, he delivers it to his principal.

§ 2345. The provisions of this article are subject to the provisions of Part I., Division First, of this Code. [§§ 25-42.]

ARTICLE V.

DELEGATION OF AGENCY.

SECTION 2349. Agent's delegation of his powers.

2350. Agent's unauthorized employment of sub-agent.

2351. Sub-agent rightfully appointed; represents principal.

§ 2349. An agent, unless specially forbidden by his principal to do so, can delegate his powers to another person in any of the following cases, and in no others :

1. When the act to be done is purely mechanical ;
2. When it is such as the agent cannot himself, and the sub-agent can lawfully perform ;
3. When it is the usage of the place to delegate such powers ; or,
4. When such delegation is specially authorized by the principal.

§ 2350. If an agent employs a sub-agent without authority, the former is a principal and the latter his agent, and the principal of the former has no connection with the latter.

§ 2351. A sub-agent, lawfully appointed, represents the principal in like manner with the original agent ; and the original agent is not responsible to third persons for the acts of the sub-agent.

ARTICLE VI.

TERMINATION OF AGENCY.

SECTION 2355. Termination of agency.

2356. Same.

§ 2355. An agency is terminated, as to every person having notice thereof, by :

1. The expiration of its term ;
2. The extinction of its subject ;
3. The death of the agent ;
4. His renunciation of the agency ; or,
5. The incapacity of the agency to act as such.

§ 2356. Unless the power of an agent is coupled with an interest in the subject of the agency, it is terminated, as to every person having notice thereof, by :

1. Its revocation by the principal ;
2. His death ; or,
3. His incapacity to contract.

CHAPTER II.

PARTICULAR AGENCIES.

ARTICLE I. AUCTIONEERS, §§ 2362-2363.

II. FACTORS, §§ 2367-2369.

III. SHIPMASTERS AND PILOTS, §§ 2373-2385.

IV. SHIPS' MANAGERS, §§ 2388-2389.

ARTICLE I.

AUCTIONEERS.

SECTION 2362. Auctioneer's authority from the seller.

2363. Auctioneer's authority from the bidder.

§ 2362. An auctioneer, in the absence of special authorisation or usage to the contrary, has authority from the seller, only as follows :

1. To sell by public auction to the highest bidder ;
2. To sell for cash only, except such articles as are usually sold on credit at auction ;
3. To warrant, in like manner with other agents to sell, according to section 2323 ;
4. To prescribe reasonable rules and terms of sale ;
5. To deliver the thing sold, upon payment of the price ;
6. To collect the price ; and,
7. To do whatever else is necessary, or proper and usual, in the ordinary course of business, for effecting these purposes.

§ 2363. An auctioneer has authority from a bidder at the auction, as well as from the seller, to bind both by a memorandum of the contract, as prescribed in the Title on Sale.

Concerning auctioneers. Pol. Code, §§ 3284-3324.

ARTICLE II.

FACTORS.

SECTION 2367. Factor, what.

2368. Actual authority of factor.

2369. Ostensible authority.

§ 2367. A factor is an agent, as defined by section 2026.

§ 2368. In addition to the authority of agents in general, a factor has actual authority from his principal, unless specially restricted :

1. To insure property consigned to him uninsured ;
2. To sell, on credit, anything intrusted to him for sale, except such things as it is contrary to usage to sell on credit ; but not to pledge, mortgage, or barter the same ; and,
3. To delegate his authority to his partner or servant, but not to any person in an independent employment.

§ 2369. A factor has ostensible authority to deal with the property of his principal as his own, in transactions with persons not having notice of the actual ownership.

52 Cal. 589.

ARTICLE III.

SHIPMASTERS AND PILOTS.

SECTION 2373. Authority of shipmaster on behalf of shipowner

2374. Authority to borrow.

2375. Authority on behalf of owners of cargo.

2376. Power to make contracts.

2377. Power to hypothecate.

2378. Master's power to sell ship.

2379. Master's power to sell cargo.

2380. Authority to ransom ship.

2381. Abandonment terminates master's power.

2382. Personal liability for contracts concerning the ship.

2383. Liability for acts of persons employed upon the ship.

2384. Responsibility for negligence of pilot.

2385. Obligations of shipowner to owner of cargo.

§ 2373. The master of a ship is a general agent for its owner in all matters concerning the same.

§ 2374. The master of a ship has authority to borrow money on the credit of its owner, if it is necessary to enable

him to complete the voyage, and if neither the owner nor his proper agent for such matters can be consulted without injurious delay.

§ 2375. The master of a ship, during a voyage, is a general agent for each of the owners of the cargo, and has authority to do whatever they might do for the preservation of their respective interests, but he cannot sell or hypothecate the cargo, except in the cases mentioned in this article. [In effect July 1, 1874.]

§ 2376. The master of a ship may procure all its necessary repairs and supplies, may engage cargo and passengers for carriage, and, in a foreign port, may enter into a charter party; and his contracts for these purposes bind the owner to the full amount of the value of the ship and freightage.

§ 2377. The master of a ship may hypothecate the ship, freightage, and cargo, and sell part of the cargo, in the cases prescribed by the Chapters on Bottomry and Respondentia, and in no others, except that the master may also sell the cargo or any part of it, short of the port of destination, if found to be of such perishable nature, or in such damaged condition that, if left on board or reshipped, it would be entirely lost, or would seriously endanger the interests of its owners. [In effect July 1, 1874.]

§ 2378. When a ship, whether foreign or domestic, is seriously injured, or the voyage is otherwise broken up, beyond the possibility of pursuing it, the master, in case of necessity, may sell the ship without instructions from the owners, unless by the earliest use of ordinary means of communication he can inform the owners, and await their instructions.

§ 2379. The master of a ship may sell the cargo, if the voyage is broken up beyond the possibility of pursuing it, and no other ship can be obtained to carry it to its destination, and the sale is otherwise absolutely necessary.

§ 2380. The master of a ship, in case of its capture, may engage to pay a ransom for it, in money or in part of the cargo, and his engagement will bind the ship, freightage, and cargo.

§ 2381. The power of the master of a ship to bind its owner, or the owners of the cargo, ceases upon the abandonment of the ship and freightage to insurers.

§ 2382. Unless otherwise expressly agreed, or unless the contracting parties give exclusive credit to the owner, the master of a ship is personally liable upon his contracts relative thereto even when the owner is also liable.

§ 2383. The master of a ship is liable to third persons for the acts or negligence of persons employed in its navigation, whether appointed by him or not, to the same extent as the owner of the ship.

§ 2384. The owner or master of a ship is not responsible for the negligence of a pilot whom he is bound by law to employ; but if he is allowed an option between pilots, some of whom are competent, or is required only to pay compensation to a pilot, whether he employs him or not, he is so responsible to third persons.

§ 2385. The owner of a ship is bound to pay to the owner of her cargo the market value at the time of arrival of the ship at the port of her destination, of that portion of her cargo which has been sold to enable the master to pay the necessary repairs and supplies of the ship. [In effect July 1, 1874.]

ARTICLE IV.

SHIPS' MANAGERS.

SECTION 2388. What powers manager has.

2389. What powers he has not.

§ 2388. A ship's manager has power to make contracts requisite for the performance of his duties as such; to enter into charter parties, or make contracts for carriage; and to settle for freightage and adjust averages.

§ 2389. Without special authority a ship's manager cannot borrow money or give up the lien for freightage, or purchase a cargo, or bind the owners of the ship to an insurance

TITLE X.

PARTNERSHIP.

CHAPTER I. PARTNERSHIP IN GENERAL, §§ 2395-2418.

II. GENERAL PARTNERSHIP, §§ 2424-2471.

III. SPECIAL PARTNERSHIP, §§ 2477-2510

IV. MINING PARTNERSHIP, §§ 2511-2520.

CHAPTER I.

PARTNERSHIP IN GENERAL.

ARTICLE I. WHAT CONSTITUTES A PARTNERSHIP, §§ 2395-2397.

II. PARTNERSHIP PROPERTY, §§ 2401-2406.

III. MUTUAL OBLIGATIONS OF PARTNERS, §§ 2410-2418.

IV. RENUNCIATION OF PARTNERSHIP, §§ 2417-2418

ARTICLE I.

WHAT CONSTITUTES A PARTNERSHIP.

SECTION 2395. Partnership, what.

2396. Shipowners.

2397. Formation of partnership.

§ 2395. Partnership is the association of two or more persons, for the purpose of carrying on business together, and dividing its profits between them.

§ 2396. Part owners of a ship do not, by simply using it in a joint enterprise, become partners as to the ship.

§ 2397. A partnership can be formed only by the consent of all the parties thereto, and therefore no new partner can be admitted into a partnership without the consent of every existing member thereof.

ARTICLE II.

PARTNERSHIP PROPERTY.

SECTION 2401. Partnership property, what.

2402. Partner's interest in partnership property.

2403. Partner's share in profits and losses.

2404. When division of losses implied.

2405. Partner may require application of partnership property to payment of debts.

2406. What property is partnership property by presumption.

§ 2401. The property of a partnership consists of all that is contributed to the common stock at the formation of the partnership, and all that is subsequently acquired thereby.

§ 2402. The interest of each member of a partnership extends to every portion of its property.

§ 2403. In the absence of any agreement on the subject, the shares of partners in the profit or loss of the business are equal, and the share of each in the partnership property is the value of his original contribution, increased or diminished by his share of profit or loss.

56 Cal. 450.

§ 2404. An agreement to divide the profits of a business implies an agreement for a corresponding division of its losses, unless it is otherwise expressly stipulated.

§ 2405. Each member of a partnership may require its property to be applied to the discharge of its debts, and has a lien upon the shares of the other partners for this purpose, and for the payment of the general balance if any due to him.

58 Cal. 456.

§ 2406. Property, whether real or personal, acquired with partnership funds, is presumed to be partnership property.

ARTICLE III.

MUTUAL OBLIGATION OF PARTNERS.

SECTION 2410. Partners trustees for each other

2411. Good faith to be observed between them.

2412. Mutual liability of partners to account.

2413. No compensation for services to firm.

§ 2410. The relations of partners are confidential. They are trustees for each other within the meaning of Chapter I. of the Title on Trusts, and their obligations as such trustees are defined by that chapter.

§ 2411. In all proceedings connected with the formation, conduct, dissolution, and liquidation of a partnership, every partner is bound to act in the highest good faith toward his copartners. He may not obtain any advantage over them in the partnership affairs by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind.

§ 2412. Each member of a partnership must account to it for everything that he receives on account thereof, and is entitled to reimbursement therefrom for everything that he properly expends for the benefit thereof, and to be indemnified thereby for all losses and risks which he necessarily incurs on its behalf.

§ 2413. A partner is not entitled to any compensation for services rendered by him to the partnership.

ARTICLE IV.

RENUNCIATION OF PARTNERSHIP.

SECTION 2417. Renunciation of future profits exonerates from liability.
2418. Effect of renunciation.

§ 2417. A partner may exonerate himself from all future liability to a third person, on account of the partnership, by renouncing, in good faith, all participation in its future profits, and giving notice to such third person, and to his own copartners, that he has made such renunciation, and that, so far as may be in his power, he dissolves the partnership and does not intend to be liable on account thereof for the future.

§ 2418. After a partner has given notice of his renunciation of the partnership, he cannot claim any of its subsequent profits, and his copartners may proceed to dissolve the partnership.

CHAPTER II.

GENERAL PARTNERSHIP.

ARTICLE I. WHAT IS A GENERAL PARTNERSHIP, § 2424.

II. POWERS AND AUTHORITY OF PARTNERS, §§ 2428-2431.

III. MUTUAL OBLIGATIONS OF PARTNERS, §§ 2435-2438.

IV. LIABILITY OF PARTNERS, §§ 2442-2445.

V. TERMINATION OF PARTNERSHIP, §§ 2449-2454.

VI. LIQUIDATION, §§ 2458-2462.

VII. OF THE USE OF FICTITIOUS NAMES, §§ 2466-2471.

ARTICLE I.

WHAT IS A GENERAL PARTNERSHIP.

SECTION 2424. General partnership, what.

§ 2424. Every partnership that is not formed in accordance with the law concerning special or mining partnerships, and every special partnership so far only as the general partners are concerned, is a general partnership.

ARTICLE II.

POWERS AND AUTHORITY OF PARTNERS.

SECTION 2428. Power of majority of partners.

2429. Authority of individual partner.

2430. What authority partner has not.

2431. Partner's acts in bad faith, when ineffectual.

§ 2428. Unless otherwise expressly stipulated, the decision of the majority of the members of a general partnership binds it in the conduct of its business.

§ 2429. Every general partner is agent for the partnership in the transaction of its business, and has authority to do whatever is necessary to carry on such business in the ordinary manner, and for this purpose may bind his copartners by an agreement in writing.

§ 2430. A partner, as such, has not authority to do any of the following acts, unless his copartners have wholly abandoned the business to him, or are incapable of acting :

1. To make an assignment of the partnership property or any portion thereof to a creditor, or to a third person in trust for the benefit of a creditor or of all creditors ;
2. To dispose of the good will of the business ;
3. To dispose of the whole of the partnership property at once, unless it consists entirely of merchandise ;
4. To do any act which would make it impossible to carry on the ordinary business of the partnership ;
5. To confess a judgment ;
6. To submit a partnership claim to arbitration ;
7. To do any other act not within the scope of the preceding section.

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§ 2431. A partner is not bound by any act of a copartner, in bad faith toward him, though within the scope of the partner's powers, except in favor of persons who have in good faith parted with value in reliance upon such act.

ARTICLE III.

MUTUAL OBLIGATIONS OF PARTNERS.

SECTION 2435. Profits of individual partner.

2436. In what business partner may not engage.

2437. In what he may engage.

2438. Must account to firm for profits.

§ 2435. All profits made by a general partner, in the course of any business usually carried on by the partnership, belong to the firm.

§ 2436. A general partner, who agrees to give his personal attention to the business of the partnership, may not engage in any business which gives him an interest adverse to that of the partnership, or which prevents him from giving to such business all the attention which would be advantageous to it.

§ 2437. A partner may engage in any separate business, except as otherwise provided by the last two sections.

§ 2438. A general partner transacting business contrary to the provisions of this article may be required by any copartner to account to the partnership for the profits of such business.

ARTICLE IV.

LIABILITY OF PARTNERS.

SECTION 2442. Liability of partners to third persons.

2443. Liability for each other's acts as agents.

2444. Liability of one held out as partner.

2445. No one liable as partner unless held out as such.

§ 2442. Every general partner is liable to third persons for all the obligations of the partnership, jointly with his co-partners.

§ 2443. The liability of general partners for each other's acts is defined by the Title on Agency.

§ 2444. Any one permitting himself to be represented as a partner, general or special, is liable, as such, to third persons to whom such representation is communicated, and who, on the faith thereof, give credit to the partnership.

§ 2445. No one is liable as a partner who is not such in fact, except as provided in the last section.

ARTICLE V.

TERMINATION OF PARTNERSHIP.

SECTION 2449. Duration of partnership.

2450. Total dissolution of partnership.

2451. Partial dissolution.

2452. Partner entitled to dissolution.

2453. Notice of termination

2454. Notice by change of name.

§ 2449. If no term is prescribed by agreement for its duration, a general partnership continues until dissolved by a partner or by operation of law.

§ 2450. A general partnership is dissolved as to all the partners:

1. By lapse of the time prescribed by agreement for its duration;
2. By the expressed will of any partner, if there is no such agreement;

3. By the death of a partner ;
4. By the transfer to a person, not a partner, of the interest of any partner in the partnership property ;
5. By war, or the prohibition of commercial intercourse between the country in which one partner resides and that in which another resides ; or,
6. By a judgment of dissolution.

§ 2451. A general partnership may be dissolved, as to himself only, by the expressed will of any partner, notwithstanding his agreement for its continuance, subject however to liability to his copartners for any damage caused to them thereby, unless the circumstances are such as entitle him to a judgment of dissolution.

§ 2452. A general partner is entitled to a judgment of dissolution :

1. When he, or another partner, becomes legally incapable of contracting ;
2. When another partner fails to perform his duties under the agreement of partnership, or is guilty of serious misconduct ; or,
3. When the business of the partnership can be carried on only at a permanent loss.

§ 2453. The liability of a general partner for the acts of his copartners continues, even after a dissolution of the copartnership, in favor of persons who have had dealings with and given credit to the partnership during its existence, until they have had personal notice of the dissolution ; and in favor of other persons until such dissolution has been advertised in a newspaper published in every county where the partnership, at the time of its dissolution, had a place of business, if a newspaper is there published, to the extent in either case to which such persons part with value in good faith, and in the belief that such partner is still a member of the firm.

§ 2454. A change of the partnership name, which plainly indicates the withdrawal of a partner, is sufficient notice of the fact of such withdrawal to all persons to whom it is communicated ; but a change in the name, which does not contain such an indication, is not notice of the withdrawal of a partner.

ARTICLE VI.

LIQUIDATION.

SECTION 2458. Powers of partners after dissolution.

2459. Who may act in liquidation.

2460. Who may not act in liquidation.

2461. Powers of partners in liquidation.

2462. What partner may do in liquidation.

§ 2458. After the dissolution of a partnership, the powers and authority of the partners are such only as are prescribed by this article.

§ 2459. Any member of a general partnership may act in liquidation of its affairs, except as provided by the next section.

§ 2460. If the liquidation of a partnership is committed, by consent of all the partners, to one or more of them, the others have no right to act therein; but their acts are valid in favor of persons parting with value, in good faith, upon credit thereof.

§ 2461. A partner authorized to act in liquidation may collect, compromise, or release any debts due to the partnership, pay or compromise any claims against it, and dispose of the partnership property.

§ 2462. A partner authorized to act in liquidation may indorse, in the name of the firm, promissory notes, or other obligations held by the partnership, for the purpose of collecting the same, but he cannot create any new obligation in its name, or revive a debt against the firm, by an acknowledgment when an action thereon is barred under the provisions of the Code of Civil Procedure. [In effect July 1, 1874.]

ARTICLE VII.

OF THE USE OF FICTITIOUS NAMES.

SECTION 2466. Fictitious name.

2467. Style of foreign partnership.

2468. Certificate, when to be filed.

SECTION 2469. New certificates on change of partner.

2470. Register of such firms to be kept by county clerk.

2471. Certified copies of register, and proof of publication, to be evidence.

§ 2466. Except as otherwise provided in the next section, every partnership transacting business in this State under a fictitious name, or a designation not showing the names of the persons interested as partners in such business, must file with the clerk of the county in which its principal place of business is situated a certificate stating the names in full of all the members of such partnership and their places of residence, and publish the same once a week, for four successive weeks, in a newspaper published in the county, if there be one, and if there be none in such county, then in a newspaper published in an adjoining county. [In effect July 1, 1874.]

§ 2467. A commercial or banking partnership, established and transacting business in a place without the United States, may, without filing the certificate, or making the publication prescribed in the last section, use in this State the partnership name used by it there, although it be fictitious, or do not show the names of the persons interested as partners in such business. [In effect July 1, 1874.]

§ 2468. The certificate filed with the clerk, as provided in section twenty-four hundred and sixty-six, must be signed by the partners, and acknowledged before some officer authorized to take the acknowledgment of conveyances of real property. Where the partnership is hereafter formed, the certificate must be filed, and the publication designated in that section must be made within one month after the formation of the partnership, or within one month from the time designated in the agreement of its members for the commencement of the partnership; where the partnership has been heretofore formed, the certificate must be filed, and the publication made within six months after the passage of this act. Persons doing business as partners contrary to the provisions of this article shall not maintain any action upon or on account of any contracts made or transactions had in their partnership name, in any court of this State, until they have first filed the certificate and made the publication herein required. [In effect July 1, 1874.]

56 Cal. 159, 262.

§ 2469. On every change in the members of a partner

ship transacting business in this State under a fictitious name, or a designation which does not show the names of the persons interested as partners in its business, except in the cases mentioned in section twenty-four hundred and sixty-seven, a new certificate must be filed with the county clerk, and a new publication made, as required by this article on the formation of such partnership. [In effect July 1, 1874.]

§ 2470. Every county clerk must keep a register of the names of firms and persons mentioned in the certificates filed with him, pursuant to this article, entering in alphabetical order the name of every such partnership, and of each partner therein. [In effect July 1, 1874.]

§ 2471. Copies of the entries of a county clerk, as herein directed, when certified by him, and affidavits of publication, as herein directed, made by the printer, publisher, or chief clerk of a newspaper, are presumptive evidence of the facts therein stated.

CHAPTER III.

SPECIAL PARTNERSHIP.

ARTICLE I. FORMATION OF PARTNERSHIP, §§ 2477-2486.

II. POWERS, RIGHTS, AND DUTIES OF THE PARTNERS, §§ 2489-2496.

III. LIABILITY OF PARTNERS, §§ 2500-2508.

IV. ALTERATION AND DISSOLUTION OF THE PARTNERSHIP, §§ 2507-2510.

ARTICLE I.

FORMATION OF PARTNERSHIP.

SECTION 2477. Formation of special partnership.

2478. Of what to consist.

2479. Certified statement.

2480. Acknowledged and recorded. False statement.

2481. Affidavit as to sums contributed.

2482. No partnership until compliance.

2483. Certificate to be published.

2484. Affidavit of publication filed.

2485. Renewal of special partnership.

§ 2477. A special partnership may be formed by two or more persons, in the manner and with the effect prescribed

in this chapter, for the transaction of any business except banking or insurance.

Fraud in partnership matters. Penal Code, § 358.

§ 2478. A special partnership may consist of one or more persons called general partners, and one or more persons called special partners.

§ 2479. Persons desirous of forming a special partnership must severally sign a certificate, stating :

1. The name under which the partnership is to be conducted ;
2. The general nature of the business intended to be transacted ;
3. The names of all the partners, and their residences, specifying which are general and which are special partners ;
4. The amount of capital which each special partner has contributed to the common stock ;
5. The periods at which such partnership will begin and end.

§ 2480. Certificates under the last section must be acknowledged by all the partners, before some officer authorized to take acknowledgment of deeds, one to be filed in the clerk's office, and the other recorded in the office of the recorder of the county in which the principal place of business of the partnership is situated, in a book to be kept for that purpose, open to public inspection ; and if the partnership has places of business situated in different counties, a copy of the certificate, certified by the recorder in whose office it is recorded, must be filed in the clerk's office, and recorded in like manner in the office of the recorder in every such county. If any false statement is made in any such certificate, all the persons interested in the partnership are liable, as general partners, for all the engagements thereof.

§ 2481. An affidavit of each of the partners, stating that the sums specified in the certificate of the partnership as having been contributed by each of the special partners, have been actually and in good faith paid, in the lawful money of the United States, must be filed in the same office with the original certificate.

§ 2482. No special partnership is formed until the provisions of the last five sections are complied with.

§ 2483. The certificate mentioned in this article, or a statement of its substance, must be published in a newspaper printed in the county where the original certificate is filed, and if no newspaper is there printed, then in a newspaper in the State nearest thereto. Such publication must be made once a week for four successive weeks, beginning within one week from the time of filing the certificate. In case such publication is not so made, the partnership must be deemed general.

§ 2484. An affidavit of the making of the publication mentioned in the preceding section, made by the printer, publisher, or chief clerk of the newspaper in which such publication is made, may be filed with the county recorder with whom the original certificate was filed, and is presumptive evidence of the facts therein stated.

§ 2485. Every renewal or continuance of a special partnership must be certified, recorded, verified, and published in the same manner as upon its original formation.

ARTICLE II.

POWERS, RIGHTS, AND DUTIES OF THE PARTNERS.

SECTION 2489. Who to do business.

2490. Special partners may advise.

2491. May loan money. Insolvency.

2492. General partners may sue and be sued.

2493. Withdrawal of capital.

2494. Interest and profits.

2495. Result of withdrawing capital.

2496. Preferential transfer void.

§ 2489. The general partners only have authority to transact the business of a special partnership.

§ 2490. A special partner may at all times investigate the partnership affairs, and advise his partners, or their agents, as to their management.

§ 2491. A special partner may lend money to the partnership, or advance money for it, and take from it security therefor, and as to such loans or advances has the same rights as any other creditor; but in case of the insolvency of the

partnership, all other claims which he may have against it must be postponed until all other creditors are satisfied.

§ 2492. In all matters relating to a special partnership, its general partners may sue and be sued alone, in the same manner as if there were no special partners.

§ 2493. No special partner, under any pretence, may withdraw any part of the capital invested by him in the partnership, during its continuance.

§ 2494. A special partner may receive such lawful interest and such proportion of profits as may be agreed upon, if not paid out of the capital invested in the partnership by him, or by some other special partner, and is not bound to refund the same to meet subsequent losses.

§ 2495. If a special partner withdraws capital from the firm, contrary to the provisions of this article, he thereby becomes a general partner.

§ 2496. Every transfer of the property of a special partnership, or of a partner therein, made after or in contemplation of the insolvency of such partnership or partner, with intent to give a preference to any creditor of such partnership or partner over any other creditor of such partnership, is void against the creditors thereof; and every judgment confessed, lien created, or security given, in like manner and with the like intent, is in like manner void.

ARTICLE III.

LIABILITY OF PARTNERS.

SECTION 2500. Liability of partners.

2501. Of special partners.

2502. Liability for unintentional act.

2503. Who may question existence of special partnership.

§ 2500. The general partners in a special partnership are liable to the same extent as partners in a general partnership.

§ 2501. The contribution of a special partner to the capital of the firm, and the increase thereof, is liable for its debts but he is not otherwise liable therefor, except as follows :

1. If he has wilfully made or permitted a false or materially defective statement in the certificate of the partnership, the affidavit filed therewith, or the published announcement thereof, he is liable, as a general partner, to all creditors of the firm ;

2. If he has wilfully interfered with the business of the firm, except as permitted in Article II. of this Chapter, he is liable in like manner ; or,

3. If he has wilfully joined in or assented to an act contrary to any of the provisions of Article II. of this Chapter, he is liable in like manner.

§ 2502. When a special partner has unintentionally done any of the acts mentioned in the last section, he is liable, as a general partner, to any creditor of the firm who has been actually misled thereby to his prejudice.

§ 2503. One who, upon making a contract with a partnership, accepts from or gives to it a written memorandum of the contract, stating that the partnership is special, and giving the names of the special partners, cannot afterward charge the persons thus named as general partners upon that contract, by reason of an error or defect in the proceedings for the creation of the special partnership, prior to the acceptance of the memorandum, if an effort has been made by the partners, in good faith, to form a special partnership in the manner required by Article I. of this Chapter.

ARTICLE IV.

ALTERATION AND DISSOLUTION.

SECTION 2507. When special partnership becomes general.

2508. How new special partners may be admitted.

2509. Dissolution of special partnerships. Notice.

2510. The name of a special partner not used, unless.

§ 2507. A special partnership becomes general if, within ten days after any partner withdraws from it, or any new partner is received into it, or a change is made in the nature of its business or in its name, a certificate of such fact, duly verified and signed by one or more of the partners, is not filed with the county clerk and recorder with whom the original certificate of the partnership was filed, and notice thereof pub-

lished as is provided in Article I. of this chapter for the publication of the certificate.

§ 2508. New special partners may be admitted into a special partnership upon a certificate, stating the names, residences, and contributions to the common stock of each of such partners, signed by each of them, and by the general partners, verified, acknowledged, or proved, according to the provisions of Article I. of this chapter, and filed with the county clerk and recorder with whom the original certificate of the partnership was filed.

§ 2509. A special partnership is subject to dissolution in the same manner as a general partnership, except that no dissolution, by the act of the partners, is complete until a notice thereof has been filed and recorded in the office of the county clerk and recorder with whom the original certificate was recorded, and published once in each week, for four successive weeks, in a newspaper printed in each county where the partnership has a place of business.

§ 2510. The name of a special partner must not be used in the firm name of partnership, unless it be accompanied with the word "limited."

CHAPTER IV.

MINING PARTNERSHIPS.

- SECTION 2511. When a mining partnership exists.
 2512. Express agreement not necessary to constitute.
 2513. Profits and losses, how shared.
 2514. Lien of partners.
 2515. Mine — Partnership property.
 2516. Partnership not dissolved by sale of interest.
 2517. Purchaser takes, subject to liens, unless, &c.
 2518. Takes with notice of lien, when.
 2519. Contract in writing, when binding.
 2520. Owners of majority of shares govern.

§ 2511. A mining partnership exists when two or more persons who own or acquire a mining claim for the purpose of working it and extracting the mineral therefrom actually engage in working the same.

§ 2512. An express agreement to become partners or to share the profits and losses of mining is not necessary to the formation or existence of a mining partnership. The relation arises from the ownership of shares or interests in the mine and working the same for the purpose of extracting the minerals therefrom.

§ 2513. A member of a mining partnership shares in the profits and losses thereof in the proportion which the interest or share he owns in the mine bears to the whole partnership capital or whole number of shares.

§ 2514. Each member of a mining partnership has a lien on the partnership property for the debts due the creditors thereof, and for money advanced by him for its use. This lien exists notwithstanding there is an agreement among the partners that it must not.

§ 2515. The mining ground owned and worked by partners in mining, whether purchased with partnership funds or not, is partnership property.

§ 2516. One of the partners in a mining partnership may convey his interest in the mine and business without dissolving the partnership. The purchaser, from the date of his purchase, becomes a member of the partnership.

§ 2517. A purchaser of an interest in the mining ground of a mining partnership takes it subject to the liens existing in favor of the partners for debts due all creditors thereof, or advances made for the benefit of the partnership, unless he purchased in good faith, for a valuable consideration, without notice of such lien.

§ 2518. A purchaser of the interest of a partner in a mine when the partnership is engaged in working it, takes with notice of all liens resulting from the relation of the partners to each other and to the creditors of the partnership.

§ 2519. No member of a mining partnership or other agent or manager thereof can, by a contract in writing, bind the partnership, except by express authority derived from the members thereof.

§ 2520. The decision of the members owning a majority of the shares or interests in a mining partnership binds it in the conduct of its business.

TITLE XI.

INSURANCE.

CHAPTER I. INSURANCE IN GENERAL, §§ 2527-2649.

II. MARINE INSURANCE, §§ 2655-2746.

III. FIRE INSURANCE, §§ 2752-2756.

IV. LIFE AND HEALTH INSURANCE, §§ 2762-2766.

CHAPTER I.

INSURANCE IN GENERAL.

ARTICLE I. DEFINITION OF INSURANCE, § 2527.

II. WHAT MAY BE INSURED, §§ 2531-2534.

III. PARTIES, §§ 2538-2542.

IV. INSURABLE INTEREST, §§ 2546-2558.

V. CONCEALMENT AND REPRESENTATION, §§ 2561-2563.

VI. THE POLICY, §§ 2586-2599.

VII. WARRANTIES, §§ 2603-2612.

VIII. PREMIUMS, §§ 2616-2622.

IX. LOSS, §§ 2626-2629.

X. NOTICE OF LOSS, §§ 2633-2637.

XI. DOUBLE INSURANCE, §§ 2641-2642.

XII. REINSURANCE, §§ 2646-2649.

ARTICLE I.

DEFINITION OF INSURANCE.

SECTION 2527. Insurance, what.

§ 2527. Insurance is a contract whereby one undertakes to indemnify another against loss, damage, or liability, arising from an unknown or contingent event.

Office and Duties of Insurance Commissioners, Pol. Code, §§ 594-602
Destruction of Insured Property, Penal Code, § 548; Arson, Penal Code
§§ 447-451.

ARTICLE II.

WHAT MAY BE INSURED.

SECTION 2531. What events may be insured against.

2532. Insurance of lottery or lottery prize unauthorized.

2533. Usual kinds of insurance.

2534. All subject to this chapter.

§ 2531. Any contingent or unknown event, whether past or future, which may damnify a person having an insurable interest, or create a liability against him, may be insured against, subject to the provisions of this chapter.

§ 2532. The preceding section does not authorize an insurance for or against the drawing of any lottery, or for or against any chance or ticket in a lottery drawing a prize.

Lotteries. Penal Code, §§ 324, 326.

§ 2533. The most usual kinds of insurance are :

1. Marine insurance ;
2. Fire insurance ;
3. Life insurance ;
4. Health insurance ; and,
5. Accident insurance.

§ 2534. All kinds of insurance are subject to the provisions of this chapter.

ARTICLE III.

PARTIES TO THE CONTRACT.

SECTION 2538. Designation of parties.

2539. Who may insure.

2540. Who may be insured.

2541. Assignment to mortgagee of thing insured.

2542. New contract between insurer and assignee.

§ 2538. The person who undertakes to indemnify another by a contract of insurance is called the insurer, and the person indemnified is called the insured.

§ 2539. Any one capable of making a contract may be an insurer, subject to the restrictions imposed by special statutes upon foreign corporations, non-residents, and others.

§ 2540. Any one except a public enemy may be insured.

§ 2541. Where a mortgagor of property effects insurance in his own name, providing that the loss shall be payable to the mortgagee, or assigns a policy of insurance to the mortgagee, the insurance is deemed to be upon the interest of the mortgagor, who does not cease to be a party to the original contract, and any act of his which would otherwise avoid the insurance will have the same effect, although the property is in the hands of the mortgagee.

§ 2542. If an insurer assents to the transfer of an insurance from a mortgagor to a mortgagee, and, at the time of his assent, imposes further obligations on the assignee, making a new contract with him, the acts of the mortgagor cannot affect his rights.

ARTICLE IV.

INSURABLE INTEREST.

SECTION 2546. Insurable interest, what.

2547. In what may consist.

2548. Interest of carrier or depositary.

2549. Mere expectancies.

2550. Measure of interest in property.

2551. Insurance without interest, illegal.

2552. When interest must exist.

2553. Effect of transfer.

2554. Transfer after loss.

2555. Exception in the case of several subjects in one policy.

2556. In case of the death of the insurer.

2557. In the case of transfer between co-tenants.

2558. Policy, when void.

§ 2546. Every interest in property, or any relation thereto, or liability in respect thereof, of such a nature that a contemplated peril might directly damnify the insured, is an insurable interest.

§ 2547. An insurable interest in property may consist in :

1. An existing interest ;
2. An inchoate interest founded on an existing interest, or,
3. An expectancy, coupled with an existing interest in that out of which the expectancy arises.

§ 2548. A carrier or depositary of any kind has an insurable interest in a thing held by him as such, to the extent of its value.

§ 2549. A mere contingent or expectant interest in anything, not founded on an actual right to the thing, nor upon any valid contract for it, is not insurable.

§ 2550. The measure of an insurable interest in property is the extent to which the insured might be damnified by loss or injury thereof.

§ 2551. The sole object of insurance is the indemnity of the insured, and if he has no insurable interest the contract is void.

§ 2552. An interest insured must exist when the insurance takes effect, and when the loss occurs, but need not exist in the mean time.

§ 2553. Except in the cases specified in the next four sections, and in the cases of life, accident, and health insurance, a change of interest in any part of a thing insured, unaccompanied by a corresponding change of interest in the insurance, suspends the insurance to an equivalent extent, until the interest in the thing and the interest in the insurance are vested in the same person.

§ 2554. A change of interest in a thing insured, after the occurrence of an injury which results in a loss, does not affect the right of the insured to indemnity for the loss.

§ 2555. A change of interest in one or more of several distinct things, separately insured by one policy, does not avoid the insurance as to the others.

§ 2556. A change of interest, by will or succession, on the death of the insured, does not avoid an insurance; and his interest in the insurance passes to the person taking his interest in the thing insured.

§ 2557. A transfer of interest by one of several partners, joint owners, or owners in common, who are jointly insured, to the others, does not avoid an insurance, even though it has

been agreed that the insurance shall cease upon an alienation of the thing insured.

§ 2558. Every stipulation in a policy of insurance for the payment of loss, whether the person insured has or has not any interest in the property insured, or that the policy shall be received as proof of such interest, and every policy executed by way of gaming or wagering, is void. [In effect July 1, 1874.]

ARTICLE V.

CONCEALMENT AND REPRESENTATIONS.

- SECTION** 2561. Concealment, what.
 2562. Effect of concealment.
 2563. What must be disclosed.
 2564. Matters which need not be communicated without inquiry.
 2565. Test of materiality.
 2566. Matters which each is bound to know.
 2567. Waiver of communication.
 2568. Interest of insured.
 2569. Fraudulent warranty.
 2570. Matters of opinion.
 2571. Representation, what.
 2572. When made.
 2573. How interpreted.
 2574. Representation as to future.
 2575. How may affect policy.
 2576. When may be withdrawn.
 2577. Time intended by representation.
 2578. Representing information.
 2579. Falsity.
 2580. Effect of falsity.
 2581. Materiality.
 2582. Application of provisions of this article.
 2583. Right to rescind.

§ 2561. A neglect to communicate that which a party knows, and ought to communicate, is called a concealment.

§ 2562. A concealment, whether intentional or unintentional, entitles the injured party to rescind a contract of insurance.

§ 2563. Each party to a contract of insurance must communicate to the other, in good faith, all facts within his knowledge which are or which he believes to be material to the con-

tract, and which the other has not the means of ascertaining, and as to which he makes no warranty.

§ 2564. Neither party to a contract of insurance is bound to communicate information of the matters following, except in answer to the inquiries of the other :

1. Those which the other knows ;
2. Those which, in the exercise of ordinary care, the other ought to know, and of which the former has no reason to suppose him ignorant ;
3. Those of which the other waives communication ;
4. Those which prove or tend to prove the existence of a risk excluded by a warranty, and which are not otherwise material ; and,
5. Those which relate to a risk excepted from the policy, and which are not otherwise material.

§ 2565. Materiality is to be determined not by the event, but solely by the probable and reasonable influence of the facts upon the party to whom the communication is due, in forming his estimate of the disadvantages of the proposed contract, or in making his inquiries.

§ 2566. Each party to a contract of insurance is bound to know all the general causes which are open to his inquiry, equally with that of the other, and which may affect either the political or material perils contemplated ; and all general usages of trade.

§ 2567. The right to information of material facts may be waived, either by the terms of insurance or by neglect to make inquiries as to such facts, where they are distinctly implied in other facts of which information is communicated.

§ 2568. Information of the nature or amount of the interest of one insured need not be communicated unless in answer to an inquiry, except as prescribed by section 2587.

§ 2569. An intentional and fraudulent omission, on the part of one insured, to communicate information of matters proving or tending to prove the falsity of a warranty, entitles the insurer to rescind.

§ 2570. Neither party to a contract of insurance is bound

to communicate, even upon inquiry, information of his own judgment upon the matters in question.

§ 2571. A representation may be oral or written.

§ 2572. A representation may be made at the same time with issuing the policy, or before it.

§ 2573. The language of a representation is to be interpreted by the same rules as the language of contracts in general.

§ 2574. A representation as to the future is to be deemed a promise, unless it appears that it was merely a statement of belief or expectation.

§ 2575. A representation cannot be allowed to qualify an express provision in a contract of insurance; but it may qualify an implied warranty.

§ 2576. A representation may be altered or withdrawn before the insurance is effected, but not afterwards.

§ 2577. The completion of the contract of insurance is the time to which a representation must be presumed to refer.

§ 2578. When a person insured has no personal knowledge of a fact, he may nevertheless repeat information which he has upon the subject, and which he believes to be true, with the explanation that he does so on the information of others, or he may submit the information, in its whole extent, to the insurer; and in neither case is he responsible for its truth, unless it proceeds from an agent of the insured, whose duty it is to give the intelligence.

§ 2579. A representation is to be deemed false when the facts fail to correspond with its assertions or stipulations.

§ 2580. If a representation is false in a material point, whether affirmative or promissory, the injured party is entitled to rescind the contract from the time when the representation becomes false.

§ 2581. The materiality of a representation is determined by the same rule as the materiality of a concealment.

§ 2582. The provisions of this article apply as well to a modification of a contract of insurance as to its original formation.

§ 2583. Whenever a right to rescind a contract of insurance is given to the insurer by any provision of this chapter, such right may be exercised at any time previous to the commencement of an action on the contract. [In effect July 1, 1874.]

ARTICLE VI.

THE POLICY.

- SECTION** 2586. Policy, what.
2587. What must be specified in a policy.
2588. Whose interest is covered.
2589. Insurance by agent or trustee.
2590. Insurance by part owner.
2591. General terms.
2592. Successive owners.
2593. Transfer of the thing insured.
2594. Open and valued policies.
2595. Open policy, what.
2596. Valued policy, what.
2597. Running policy, what.
2598. Effect of receipt.
2599. Agreement not to transfer.

§ 2586. The written instrument, in which a contract of insurance is set forth, is called a policy of insurance.

§ 2587. A policy of insurance must specify :

1. The parties between whom the contract is made ;
2. The rate of premium ;
3. The property or life insured ;
4. The interest of the insured in property insured, if he is not the absolute owner thereof ;
5. The risks insured against ; and,
6. The period during which the insurance is to continue.

§ 2588. When the name of the person intended to be insured is specified in a policy, it can be applied only to his own proper interest.

§ 2589. When an insurance is made by an agent or trustee, the fact that his principal or beneficiary is the person

really insured may be indicated by describing him as agent or trustee, or by other general words in the policy.

§ 2590. To render an insurance, effected by one partner or part owner, applicable to the interest of his copartners, or of other part owners, it is necessary that the terms of the policy should be such as are applicable to the joint or common interest.

§ 2591. When the description of the insured in a policy is so general that it may comprehend any person or any class of persons, he only can claim the benefit of the policy who can show that it was intended to include him.

§ 2592. A policy may be so framed that it will enure to the benefit of whomsoever, during the continuance of the risk, may become the owner of the interest insured.

§ 2593. The mere transfer of a thing insured does not transfer the policy, but suspends it until the same person becomes the owner of both the policy and the thing insured.

§ 2594. A policy is either open or valued.

§ 2595. An open policy is one in which the value of the thing insured is not agreed upon, but is left to be ascertained in case of loss.

§ 2596. A valued policy is one which expresses on its face an agreement that the thing insured shall be valued at a specified sum.

§ 2597. A running policy is one which contemplates successive insurances, and which provides that the object of the policy may be from time to time defined, especially as to the subjects of insurance, by additional statements or indorsements.

§ 2598. An acknowledgment in a policy of the receipt of premium is conclusive evidence of its payment, so far as to make the policy binding, notwithstanding any stipulation therein that it shall not be binding until the premium is actually paid.

§ 2599. An agreement made before a loss, not to transfer the claim of a person insured against the insurer, after the loss has happened, is void.

ARTICLE VII.

WARRANTIES.

SECTION 2603. Warranty, express or implied.

2604. Form.

2605. Warranty, in what contained.

2606. Past, present, and future warranties.

2607. Warranty as to past or present.

2608. Warranty as to the future.

2609. Performance excused.

2610. What acts avoid the policy.

2611. Policy may provide for avoidance.

2612. Breach without fraud.

§ 2603. A warranty is either express or implied.

§ 2604. No particular form of words is necessary to create a warranty.

§ 2605. Every express warranty, made at or before the execution of a policy, must be contained in the policy itself, or in another instrument signed by the insured, and referred to in the policy, as making a part of it. [In effect July 1, 1874.]

§ 2606. A warranty may relate to the past, the present, the future, or to any or all of these.

§ 2607. A statement in a policy, of a matter relating to the person or thing insured, or to the risk, as a fact, is an express warranty thereof.

§ 2608. A statement in a policy, which imports that it is intended to do or not to do a thing which materially affects the risk, is a warranty that such act or omission shall take place.

§ 2609. When before the time arrives for the performance of a warranty relating to the future, a loss insured against happens, or performance becomes unlawful at the

place of the contract, or impossible, the omission to fulfil the warranty does not avoid the policy. [In effect July 1, 1874.]

§ 2610. The violation of a material warranty, or other material provision of a policy, on the part of either party thereto, entitles the other to rescind.

§ 2611. A policy may declare that a violation of specified provisions thereof shall avoid it, otherwise the breach of an immaterial provision does not avoid the policy.

§ 2612. A breach of warranty, without fraud, merely exonerates an insurer from the time that it occurs, or where it is broken in its inception prevents the policy from attaching to the risk.

ARTICLE VIII.

PREMIUM.

SECTION 2616. When premium is earned.

2617. Return of premium.

2618. When none allowed.

2619. Return for fraud.

2620. Over-insurance by several insurers.

2621. Contribution.

2622. Proportionate contribution.

§ 2616. An insurer is entitled to payment of the premium as soon as the thing insured is exposed to the peril insured against.

§ 2617. A person insured is entitled to a return of premium, as follows :

1. To the whole premium, if no part of his interest in the thing insured be exposed to any of the perils insured against;

2. Where the insurance is made for a definite period of time, and the insured surrenders his policy, to such proportion of the premium as corresponds with the unexpired time, after deducting from the whole premium any claim for loss or damage under the policy which has previously accrued. [In effect July 1, 1874.]

§ 2618. If a peril insured against has existed, and the insurer has been liable for any period, however short, the insured is not entitled to return of premiums, so far as that particular risk is concerned. [In effect July 1, 1874.]

§ 2619. A person insured is entitled to a return of the premium when the contract is voidable, on account of the fraud or misrepresentation of the insurer, or on account of facts, of the existence of which the insured was ignorant without his fault; or when, by any default of the insured other than actual fraud, the insurer never incurred any liability under the policy.

§ 2620. In case of an over-insurance by several insurers, the insured is entitled to a ratable return of the premium, proportioned to the amount by which the aggregate sum insured in all the policies exceeds the insurable value of the thing at risk.

§ 2621. When an over-insurance is effected by simultaneous policies, the insurers contribute to the premium to be returned in proportion to the amount insured by their respective policies.

§ 2622. When an over-insurance is effected by successive policies, those only contribute to a return of the premium who are exonerated by prior insurances from the liability assumed by them, and in proportion as the sum for which the premium was paid exceeds the amount for which, on account of prior insurance, they could be made liable.

ARTICLE IX.

LOSS.

SECTION 2626. Perils, remote and proximate.

2627. Loss incurred in rescue from peril.

2628. Excepted perils.

2629. Negligence and fraud.

§ 2626. An insurer is liable for a loss of which a peril insured against was the proximate cause; although a peril not contemplated by the contract may have been a remote cause of the loss; but he is not liable for a loss of which the peril insured against was only a remote cause.

§ 2627. An insurer is liable where the thing insured is rescued from a peril insured against, that would otherwise have caused a loss, if in the course of such rescue the thing is

exposed to a peril not insured against, which permanently deprives the insured of its possession, in whole or in part; or where a loss is caused by efforts to rescue the thing insured from a peril insured against.

§ 2628. Where a peril is specially excepted in a contract of insurance, a loss, which would not have occurred but for such peril, is thereby excepted; although the immediate cause of the loss was a peril which was not excepted.

§ 2629. An insurer is not liable for a loss caused by the wilful act of the insured; but he is not exonerated by the negligence of the insured, or of his agents or others. [In effect July 1, 1874.]

ARTICLE X.

NOTICE OF LOSS.

SECTION 2633. Notice of loss.

2634. Preliminary proofs.

2635. Waivers of defects in notice, &c.

2636. Waiver of delay.

2637. Certificate, when dispensed with.

§ 2633. In case of loss upon an insurance against fire, an insurer is exonerated, if notice thereof be not given to him by some person insured, or entitled to the benefit of the insurance, without unnecessary delay. [In effect July 1, 1874.]

§ 2634. When preliminary proof of loss is required by a policy, the insured is not bound to give such proof as would be necessary in a court of justice; but it is sufficient for him to give the best evidence which he has in his power at the time.

§ 2635. All defects in a notice of loss, or in preliminary proof thereof which the insured might remedy, and which the insurer omits to specify to him, without unnecessary delay, as grounds of objection, are waived.

§ 2636. Delay in the presentation to an insurer of notice or proof of loss is waived, if caused by any act of his, or if he omits to make objection promptly and specifically upon that ground.

§ 2637. If a policy requires, by way of preliminary proof of loss, the certificate or testimony of a person other than the insured, it is sufficient for the insured to use reasonable diligence to procure it, and in case of the refusal of such person to give it, then to furnish reasonable evidence to the insurer that such refusal was not induced by any just grounds of disbelief in the facts necessary to be certified.

Presenting false proofs for Policies. Penal Code, § 549.

ARTICLE XI.

DOUBLE INSURANCE.

SECTION 2641. Double insurance.

2642. Contribution in case of double insurance.

§ 2641. A double insurance exists where the same person is insured by several insurers separately in respect to the same subject and interest.

§ 2642. In case of double insurance, the several insurers are liable to pay losses thereon as follows :

1. In fire insurance, each insurer must contribute ratably towards the loss, without regard to the dates of the several policies ;

2. In marine insurance, the liability of the several insurers for a total loss, whether actual or constructive, where the policies are not simultaneous, is in the order of the dates of the several policies : no liability attaching to a second or other subsequent policy except as to the excess of the loss over the amount of all previous policies on the same interest. If two or more policies bear date upon the same day, they are deemed to be simultaneous, and the liability of insurers on simultaneous policies is to contribute ratably with each other. The insolvency of any of the insurers does not affect the proportionate liability of the other insurers. The liability of all insurers on the same marine interest for a partial or average loss is to contribute ratably. [In effect July 1, 1874.]

ARTICLE XII.

REINSURANCE.

SECTION 2646. Reinsurance, what.

2647. Disclosures required.

2648. Reinsurance presumed to be against liability.

2649. Original insured has no interest.

§ 2646. A contract of reinsurance is one by which an insurer procures a third person to insure him against loss or liability by reason of such original insurance.

§ 2647. Where an insurer obtains reinsurance, he must communicate all the representations of the original insured, and also all the knowledge and information he possesses, whether previously or subsequently acquired, which are material to the risk.

§ 2648. A reinsurance is presumed to be a contract of indemnity against liability, and not merely against damage.

§ 2649. The original insured has no interest in a contract of reinsurance,

CHAPTER II.

MARINE INSURANCE.

ARTICLE I. DEFINITION OF MARINE INSURANCE, § 2655.

II. INSURABLE INTEREST, §§ 2659-2665.

III. CONCEALMENT, §§ 2669-2672.

IV. REPRESENTATIONS, §§ 2676-2677.

V. IMPLIED WARRANTIES, §§ 2681-2688.

VI. THE VOYAGE, AND DEVIATION, §§ 2692-2697.

VII. LOSS, §§ 2701-2712.

VIII. ABANDONMENT, §§ 2716-2732.

IX. MEASURE OF INDEMNITY, §§ 2736-2746.

ARTICLE I.

DEFINITION OF MARINE INSURANCE.

SECTION 2655. Marine insurance, what.

§ 2655. Marine insurance is an insurance against risks connected with navigation, to which a ship, cargo, freightage, profits, or other insurable interest in movable property, may be exposed during a certain voyage or a fixed period of time.

ARTICLE II.

INSURABLE INTEREST.

- SECTION 2659. Insurable interest in a ship.
2660. Interest reduced by bottomry
2661. Freightage, what.
2662. Expected freightage.
2663. Interest in expected freightage, what.
2664. Insurable interest in profits.
2665. Insurable interest of charterer.

§ 2659. The owner of a ship has in all cases an insurable interest in it, even when it has been chartered by one who covenants to pay him its value in case of loss.

§ 2660. The insurable interest of the owner of a ship hypothecated by bottomry is only the excess of its value over the amount secured by bottomry.

§ 2661. Freightage, in the sense of a policy of marine insurance, signifies all the benefit derived by the owner, either from the chartering of the ship or its employment for the carriage of his own goods or those of others.

§ 2662. The owner of a ship has an insurable interest in expected freightage which he would have certainly earned but for the intervention of a peril insured against.

§ 2663. The interest mentioned in the last section exists, in the case of a charter party, when the ship has broken ground on the chartered voyage, and if a price is to be paid for the carriage of goods when they are actually on board, or there is some contract for putting them on board, and both ship and goods are ready for the specified voyage.

§ 2664. One who has an interest in the thing from which profits are expected to proceed, has an insurable interest in the profits.

§ 2665. The charterer of a ship has an insurable interest in it, to the extent that he is liable to be damnified by its loss.

ARTICLE III.

CONCEALMENT.

SECTION 2669. Information must be communicated

2670. Material information.

2671. Presumption of knowledge of loss.

2672. Concealments which only affect the risk in question.

§ 2669. In marine insurance each party is bound to communicate, in addition to what is required by section 2563, all the information which he possesses, material to the risk, except such as is mentioned in section 2564, and to state the exact and whole truth in relation to all matters that he represents, or upon inquiry assumes to disclose.

§ 2670. In marine insurance, information of the belief or expectation of a third person, in reference to a material fact, is material.

§ 2671. A person insured by a contract of marine insurance is presumed to have had knowledge, at the time of insuring, of a prior loss, if the information might possibly have reached him in the usual mode of transmission, and at the usual rate of communication.

§ 2672. A concealment in a marine insurance, in respect to any of the following matters, does not vitiate the entire contract, but merely exonerates the insurer from a loss resulting from the risk concealed :

1. The national character of the insured ;
2. The liability of the thing insured to capture and detention ;
3. The liability to seizure from breach of foreign laws of trade ;
4. The want of necessary documents ; and,
5. The use of false and simulated papers.

ARTICLE IV.

REPRESENTATIONS.

SECTION 2676. Effect of intentional falsity.

2677. Representation of expectation.

§ 2676. If a representation, by a person insured by a contract of marine insurance, is intentionally false in any respect, whether material or immaterial, the insurer may rescind the entire contract.

§ 2677. The eventual falsity of a representation as to expectation does not, in the absence of fraud, avoid a contract of insurance.

ARTICLE V.

IMPLIED WARRANTIES.

SECTION 2681. Warranty of seaworthiness.

2682. Seaworthiness, what.

2683. At what time seaworthiness must exist.

2684. What things are required to constitute seaworthiness.

2685. Different degrees of seaworthiness at different stages of the voyage.

2686. Unseaworthiness during the voyage.

2687. Seaworthiness for purposes of insurance on cargo.

2688. Neutral papers.

§ 2681. In every marine insurance upon a ship or freight, or freightage, or upon anything which is the subject of marine insurance, a warranty is implied that the ship is seaworthy. [In effect July 1, 1874.]

§ 2682. A ship is seaworthy, when reasonably fit to perform the services, and to encounter the ordinary perils of the voyage, contemplated by the parties to the policy.

§ 2683. An implied warranty of seaworthiness is complied with if the ship be seaworthy at the time of the commencement of the risk, except in the following cases:

1. When the insurance is made for a specified length of time, the implied warranty is not complied with unless the ship be seaworthy at the commencement of every voyage she may undertake during that time; and,

2. When the insurance is upon the cargo, which, by the terms of the policy, or the description of the voyage, or the established custom of the trade, is to be transshipped at an intermediate port, the implied warranty is not complied with, unless each vessel upon which the cargo is shipped or transshipped be seaworthy at the commencement of its particular voyage. [In effect July 1, 1874.]

§ 2684. A warranty of seaworthiness extends not only to the condition of the structure of the ship itself, but requires that it be properly laden, and provided with a competent master, a sufficient number of competent officers and seamen, and the requisite appurtenances and equipments, such as ballast, cables, and anchors, cordage and sails, food, water, fuel, and lights, and other necessary or proper stores and implements for the voyage.

§ 2685. Where different portions of the voyage contemplated by a policy differ in respect to the things requisite to make the ship seaworthy therefor, a warranty of seaworthiness is complied with if, at the commencement of each portion, the ship is seaworthy with reference to that portion.

§ 2686. When a ship becomes unseaworthy during the voyage to which an insurance relates, an unreasonable delay in repairing the defect exonerates the insurer from liability from any loss arising therefrom.

§ 2687. A ship which is seaworthy for the purpose of an insurance upon the ship may, nevertheless, by reason of being unfitted to receive the cargo, be unseaworthy for the purpose of insurance upon the cargo.

§ 2688. Where the nationality or neutrality of a ship or cargo is expressly warranted, it is implied that the ship will carry the requisite documents to show such nationality or neutrality, and that it will not carry any documents which cast reasonable suspicion thereon.

ARTICLE VI.

THE VOYAGE AND DEVIATION.

SECTION 2692. Voyage insured, how determined.

2693. Course of sailing, how determined.

2694. Deviation, what.

2695. When proper.

2696. When improper.

2697. Deviation exonerates the insurer.

§ 2692. When the voyage contemplated by a policy is described by the places of beginning and ending, the voyage insured is one which conforms to the course of sailing fixed by mercantile usage between those places.

§ 2693. If the course of sailing is not fixed by mercantile usage, the voyage insured by a policy is the way between the places specified which, to a master of ordinary skill and discretion, would seem the most natural, direct, and advantageous.

§ 2694. Deviation is a departure from the course of the voyage insured, mentioned in the last two sections, or an unreasonable delay in pursuing the voyage, or the commencement of an entirely different voyage.

§ 2695. A deviation is proper :

1. When caused by circumstances over which neither the master nor the owner of the ship has any control ;

2. When necessary to comply with a warranty, or to avoid a peril, whether insured against or not ;

3. When made in good faith, and upon reasonable grounds of belief in its necessity to avoid a peril ; or,

4. When made in good faith, for the purpose of saving human life, or relieving another vessel in distress.

§ 2696. Every deviation not specified in the last section is improper.

§ 2697. An insurer is not liable for any loss happening to a thing insured subsequently to an improper deviation.

ARTICLE VII.

LOSS.

Section 2701. Total and partial loss.

2702. Partial loss.

2703. Actual and constructive total loss.

2704. Actual total loss, what.

2705. Constructive total loss.

2706. Presumed actual loss.

2707. Insurance on cargo, &c., when voyage is broken up.

2708. Cost of reshipment, &c.

2709. When insured is entitled to payment.

2710. Abandonment of goods on insurance of profits.

2711. Average loss.

2712. Insurance against total loss.

§ 2701. A loss may be either total or partial.

§ 2702. Every loss which is not total is partial.

§ 2703. A total loss may be either actual or constructive.

§ 2704. An actual total loss is caused by :

1. A total destruction of the thing insured ;
2. The loss of the thing by sinking, or by being broken up ;
3. Any damage to the thing which renders it valueless to the owner for the purposes for which he held it ; or,
4. Any other event which entirely deprives the owner of the possession, at the port of destination, of the thing insured.

§ 2705. A constructive total loss is one which gives to a person insured a right to abandon, under section 2717.

§ 2706. An actual loss may be presumed from the continued absence of a ship without being heard of ; and the length of time which is sufficient to raise this presumption depends on the circumstances of the case.

§ 2707. When a ship is prevented, at an intermediate port, from completing the voyage, by the perils insured against, the master must make every exertion to procure, in the same or a contiguous port, another ship, for the purpose of conveying the cargo to its destination ; and the liability of a marine in

surer thereon continues after they are thus reshipped. [In effect July 1, 1874.]

§ 2708. In addition to the liability mentioned in the last section, a marine insurer is bound for damages, expenses of discharging, storage, reshipment, extra freightage, and all other expenses incurred in saving cargo reshipped pursuant to the last section, up to the amount insured.

§ 2709. Upon an actual total loss, a person insured is entitled to payment without notice of abandonment.

§ 2710 of said Code is repealed. [In effect July 1, 1874.]

§ 2711. Where it has been agreed that an insurance upon a particular thing or class of things shall be free from particular average, a marine insurer is not liable for any particular average loss not depriving the insured of the possession, at the port of destination, of the whole of such thing, or class of things, even though it become entirely worthless, but he is liable for his proportion of all general average loss assessed upon the thing insured. [In effect July 1, 1874.]

§ 2712. An insurance confined in terms to an actual total loss does not cover a constructive total loss, but covers any loss which necessarily results in depriving the insured of the possession, at the port of destination, of the entire thing insured. [In effect July 1, 1874.]

Duties and Authority of Port Wardens. Pol. Code, §§ 2501-2511.

ARTICLE VIII.

ABANDONMENT.

SECTION 2716. Abandonment, what.

2717. When insured may abandon.

2718. Must be unqualified.

2719. When may be made.

2720. Abandonment may be defeated.

2721. How made.

2722. Requisites of notice.

2723. No other cause can be relied on.

2724. Effect.

2725. Waiver of formal abandonment.

2726. Agents of the insured become agents of the insurer

2727. Acceptance not necessary.

SECTION 2728. Acceptance conclusive.

2729. Accepted abandonment, irrevocable.

2730. Freightage, how affected by abandonment of ship.

2731. Refusal to accept.

2732. Omission to abandon.

§ 2716. Abandonment is the act by which, after a constructive total loss, a person insured by contract of marine insurance declares to the insurer that he relinquishes to him his interest in the thing insured.

§ 2717. A person insured by a contract of marine insurance may abandon the thing insured, or any particular portion thereof separately valued by the policy, or otherwise separately insured, and recover for a total loss thereof, when the cause of the loss is a peril insured against :

1. If more than half thereof in value is actually lost, or would have to be expended to recover it from the peril ;

2. If it is injured to such an extent as to reduce its value more than one half ;

3. If the thing insured, being a ship, the contemplated voyage cannot be lawfully performed without incurring an expense to the insured of more than half the value of the thing abandoned, or without incurring a risk which a prudent man would not take under the circumstances ; or,

4. If the thing insured, being cargo or freightage, the voyage cannot be performed nor an othership procured by the master, within a reasonable time and with reasonable diligence, to forward the cargo, without incurring the like expense or risk. But freightage cannot in any case be abandoned, unless the ship is also abandoned.

§ 2718. An abandonment must be neither partial nor conditional.

§ 2719. An abandonment must be made within a reasonable time after the information of the loss, and after the commencement of the voyage, and before the party abandoning has information of its completion.

§ 2720. Where the information upon which an abandonment has been made proves incorrect, or the thing insured was so far restored when the abandonment was made that there was then in fact no total loss, the abandonment becomes ineffectual.

§ 2721. Abandonment is made by giving notice thereof to the insurer, which may be done orally, or in writing.

§ 2722. A notice of abandonment must be explicit, and must specify the particular cause of the abandonment, but need state only enough to show that there is probable cause therefor, and need not be accompanied with proof of interest or of loss.

§ 2723. An abandonment can be sustained only upon the cause specified in the notice thereof.

§ 2724. An abandonment is equivalent to a transfer, by the insured, of his interest, to the insurer, with all the chances of recovery and indemnity.

§ 2725. If a marine insurer pays for a loss as if it were an actual total loss, he is entitled to whatever may remain of the thing insured, or its proceeds or salvage, as if there had been a formal abandonment.

§ 2726. Upon an abandonment, acts done in good faith by those who were agents of the insured in respect to the thing insured, subsequent to the loss, are at the risk of the insurer, and for his benefit.

§ 2727. An acceptance of an abandonment is not necessary to the rights of the insured, and is not to be presumed from the mere silence of the insurer, upon his receiving notice of abandonment.

§ 2728. The acceptance of an abandonment, whether express or implied, is conclusive upon the parties, and admits the loss and the sufficiency of the abandonment.

§ 2729. An abandonment once made and accepted is irrevocable, unless the ground upon which it was made proves to be unfounded.

§ 2730. On an accepted abandonment of a ship, freightage earned previous to the loss belongs to the insurer thereof; but freightage subsequently earned belongs to the insurer of the ship.

§ 2731. If an insurer refuses to accept a valid abandonment, he is liable as upon an actual total loss, deducting from the amount any proceeds of the thing insured which may have come to the hands of the insured.

§ 2732. If a person insured omits to abandon, he may nevertheless recover his actual loss.

Duties and Authority of Port Wardens. Polit. Code, §§ 2501-2511.

ARTICLE IX.

MEASURE OF INDEMNITY.

- SECTION 2736. Valuation, when conclusive.
- 2737. Partial loss.
- 2738. Profits.
- 2739. Valuation apportioned.
- 2740. Valuation applied to profits.
- 2741. Estimating loss under an open policy.
- 2742. Arrival of thing damaged.
- 2743. Labor and expenses.
- 2744. General average.
- 2745. Contribution.
- 2746. One third new for old.

§ 2736. A valuation in a policy of marine insurance is conclusive between the parties thereto in the adjustment of either a partial or total loss, if the insured has some interest at risk, and there is no fraud on his part; except that when a thing has been hypothecated by bottomry or respondentia, before its insurance, and without the knowledge of the person actually procuring the insurance, he may show the real value. But a valuation fraudulent in fact entitles the insurer to rescind the contract.

§ 2737. A marine insurer is liable upon a partial loss, only for such proportion of the amount insured by him as the loss bears to the value of the whole interest of the insured in the property insured.

§ 2738. Where profits are separately insured in a contract of marine insurance, the insured is entitled to recover, in case of loss, a proportion of such profits equivalent to the proportion which the value of the property lost bears to the value of the whole.

§ 2739. In case of a valued policy of marine insurance on freightage or cargo, if a part only of the subject is exposed to risk, the valuation applies only in proportion to such part.

§ 2740. When profits are valued and insured by a contract of marine insurance, a loss of them is conclusively presumed from a loss of the property out of which they were expected to arise, and the valuation fixes their amount.

§ 2741. In estimating a loss under an open policy of marine insurance, the following rules are to be observed:

1. The value of a ship is its value at the beginning of the risk, including all articles or charges which add to its permanent value, or which are necessary to prepare it for the voyage insured;

2. The value of cargo is its actual cost to the insured, when laden on board, or where that cost cannot be ascertained, its market value at the time and place of lading, adding the charges incurred in purchasing and placing it on board, but without reference to any losses incurred in raising money for its purchase, or to any drawback on its exportation, or to the fluctuations of the market at the port of destination, or to expenses incurred on the way or on arrival;

3. The value of freightage is the gross freightage, exclusive of primage, without reference to the cost of earning it; and,

4. The cost of insurance is in each case to be added to the value thus estimated.

§ 2742. If cargo insured against partial loss arrives at the port of destination in a damaged condition, the loss of the insured is deemed to be the same proportion of the value which the market price at that port, of the thing so damaged, bears to the market price it would have brought if sound.

§ 2743. A marine insurer is liable for all the expense attendant upon a loss which forces the ship into port to be repaired; and where it is agreed that the insured may labor for the recovery of the property, the insurer is liable for the expense incurred thereby, such expense, in either case, being in addition to a total loss, if that afterwards occurs.

§ 2744. A marine insurer is liable for a loss falling upon the insured, through a contribution in respect to the thing in-

sured, required to be made by him towards a general average loss called for by a peril insured against.

§ 2745. Where a person insured by a contract of marine insurance has a demand against others for contribution, he may claim the whole loss from the insurer, subrogating him to his own right to contribution. But no such claim can be made upon the insurer after the separation of the interests liable to contribution, nor when the insured, having the right and opportunity to enforce contribution from others, has neglected or waived the exercise of that right. [In effect July 1, 1874.]

§ 2746. In the case of a partial loss of a ship or its equipments, the old materials are to be applied towards payment for the new, and whether the ship is new or old, a marine insurer is liable for only two thirds of the remaining cost of the repairs, except that he must pay for anchors and cannon in full, and for sheathing metal at a depreciation of only two and one half per cent. for each month that it has been fastened to the ship.

Pol Code, § 2507

CHAPTER III.

FIRE INSURANCE.

SECTION 2752. False representation. (Repealed.)

2753. Alteration increasing risk.

2754. Alteration not increasing risk.

2755. Acts of the insured.

2756. Measure of indemnity.

§ 2752 of said Code is repealed. [In effect July 1, 1874.]

§ 2753. An alteration in the use or condition of a thing insured from that to which it is limited by the policy, made without the consent of the insurer, by means within the control of the insured, and increasing the risk, entitles an insurer to rescind a contract of fire insurance.

§ 2754. An alteration in the use or condition of a thing insured from that to which it is limited by the policy, which

does not increase the risk, does not affect a contract of fire insurance.

§ 2755. A contract of fire insurance is not affected by any act of the insured subsequent to the execution of the policy, which does not violate its provisions, even though it increases the risk and is the cause of a loss.

§ 2756. If there is no valuation in the policy, the measure of indemnity in an insurance against fire is the expense, at the time that the loss is payable, of replacing the thing lost or injured in the condition in which it was at the time of the injury; but the effect of a valuation in a policy of fire insurance is the same as in a policy of marine insurance.

CHAPTER IV.

LIFE AND HEALTH INSURANCE.

SECTION 2762. Insurance upon life, when payable.

2763. Insurable interest.

2764. Assignee, &c., of life policy need have no interest.

2765. Notice of transfer.

2766. Measure of indemnity.

§ 2762. An insurance upon life may be made payable on the death of the person, or on his surviving a specified period, or periodically so long as he shall live, or otherwise contingently on the continuance or determination of life.

§ 2763. Every person has an insurable interest in the life and health:

1. Of himself;
2. Of any person on whom he depends wholly or in part for education or support;
3. Of any person under a legal obligation to him for the payment of money, or respecting property or services, of which death or illness might delay or prevent the performance; and,
4. Of any person upon whose life any estate or interest vested in him depends.

§ 2764. A policy of insurance upon life or health may

pass by transfer, will, or succession to any person, whether he has an insurable interest or not, and such person may recover upon it whatever the insured might have recovered.

§ 2765. Notice to an insurer of a transfer or bequest thereof is not necessary to preserve the validity of a policy of insurance upon life or health, unless thereby expressly required.

§ 2766. Unless the interest of a person insured is susceptible of exact pecuniary measurement, the measure of indemnity under a policy of insurance upon life or health is the sum fixed in the policy.

TITLE XII.

INDEMNITY.

SECTION 2772. Indemnity, what.

2773. Indemnity for a future wrongful act void.

2774. Indemnity for a past wrongful act valid.

2775. Indemnity extends to acts of agents.

2776. Indemnity to several.

2777. Person indemnifying liable jointly or severally with person indemnified.

2778. Rules for interpreting agreement of indemnity.

2779. When person indemnifying is a surety.

2780. Bail, what.

2781. How regulated.

§ 2772. Indemnity is a contract by which one engages to save another from a legal consequence of the conduct of one of the parties, or of some other person.

§ 2773. An agreement to indemnify a person against an act thereafter to be done is void, if the act be known by such person, at the time of doing it, to be unlawful. [In effect July 1, 1874.]

§ 2774. An agreement to indemnify a person against an act already done is valid, even though the act was known to be wrongful, unless it was a felony.

§ 2775. An agreement to indemnify against the acts of a certain person applies not only to his acts and their consequences, but also to those of his agents.

§ 2776. An agreement to indemnify several persons applies to each, unless a contrary intention appears.

§ 2777. One who indemnifies another against an act to be done by the latter, is liable jointly with the person indemnified, and separately to every person injured by such act.

§ 2778. In the interpretation of a contract of indemnity, the following rules are to be applied, unless a contrary intention appears:

1. Upon an indemnity against liability, expressly, or in other equivalent terms, the person indemnified is entitled to recover upon becoming liable;

2. Upon an indemnity against claims, or demands, or damages, or costs, expressly, or in other equivalent terms, the person indemnified is not entitled to recover without payment thereof;

3. An indemnity against claims, or demands, or liability, expressly, or in other equivalent terms, embraces the costs of defence against such claims, demands, or liability incurred in good faith, and in the exercise of a reasonable discretion;

4. The person indemnifying is bound, on request of the person indemnified, to defend actions or proceedings brought against the latter in respect to the matters embraced by the indemnity, but the person indemnified has the right to conduct such defences, if he chooses to do so;

5. If, after request, the person indemnifying neglects to defend the person indemnified, a recovery against the latter, suffered by him in good faith, is conclusive in his favor against the former;

6. If the person indemnifying, whether he is a principal or a surety in the agreement, has not reasonable notice of the action or proceeding against the person indemnified, or is not allowed to control its defence, judgment against the latter is only presumptive evidence against the former;

7. A stipulation that a judgment against the person indemnified shall be conclusive upon the person indemnifying, is inapplicable if he had a good defence upon the merits, which by want of ordinary care he failed to establish in the action.

§ 2779. Where one, at the request of another, engages to answer in damages, whether liquidated or unliquidated, for any violation of duty on the part of the latter, he is entitled to be reimbursed in the same manner as a surety, for whatever he may pay.

§ 2780. Upon those contracts of indemnity which are taken in legal proceedings as security for the performance of an obligation imposed or declared by the tribunals, and known as undertakings or recognizances, the sureties are called bail.

§ 2781. The obligations of bail are governed by the statutes specially applicable thereto.

TITLE XIII.

GUARANTY.

CHAPTER I. GUARANTY IN GENERAL, §§ 2787-2825.

II. SURETYSHIP, §§ 2831-2866.

CHAPTER I.

GUARANTY IN GENERAL.

ARTICLE I. DEFINITION OF GUARANTY, §§ 2787-2788.

II. CREATION OF GUARANTY, §§ 2792-2795.

III. INTERPRETATION OF GUARANTY, §§ 2799-2802.

IV. LIABILITY OF GUARANTORS, §§ 2806-2810.

V. CONTINUING GUARANTY, §§ 2814-2815.

VI. EXONERATION OF GUARANTORS, §§ 2819-2825

ARTICLE I.

DEFINITION OF GUARANTY.

SECTION 2787. Guaranty, what.

2788. Knowledge of principal not necessary to creation of guaranty.

§ 2787. A guaranty is a promise to answer for the debt default, or miscarriage of another person.

§ 2788. A person may become guarantor even without the knowledge or consent of the principal.

ARTICLE II.

CREATION OF GUARANTY.

SECTION 2792. Necessity of a consideration.

2793. Guaranty to be in writing, &c.

2794. Engagement to answer for obligation of another, when deemed original.

2795. Acceptance of guaranty.

§ 2792. Where a guaranty is entered into at the same time with the original obligation, or with the acceptance of the latter by the guarantee, and forms with that obligation a part of the consideration to him, no other consideration need exist. In all other cases there must be a consideration distinct from that of the original obligation.

§ 2793. Except as prescribed by the next section, a guaranty must be in writing, and signed by the guarantor; but the writing need not express a consideration.

§ 2794. A promise to answer for the obligation of another, in any of the following cases, is deemed an original obligation of the promisor, and need not be in writing:

1. Where the promise is made by one who has received property of another upon an undertaking to apply it pursuant to such promise; or by one who has received a discharge from an obligation in whole or in part, in consideration of such promise;

2. Where the creditor parts with value, or enters into an obligation, in consideration of the obligation in respect to which the promise is made, in terms or under circumstances such as to render the party making the promise the principal debtor, and the person in whose behalf it is made, his surety;

3. Where the promise, being for an antecedent obligation of another, is made upon the consideration that the party receiving it cancels the antecedent obligation, accepting the new promise as a substitute therefor; or upon the consideration that the party receiving it releases the property of another from a levy, or his person from imprisonment under an execution on a judgment obtained upon the antecedent obligation; or upon a consideration beneficial to the promisor, whether

moving from either party to the antecedent obligation, or from another person ;

4. Where a factor undertakes, for a commission, to sell merchandise and guaranty the sale ;

5. Where the holder of an instrument for the payment of money, upon which a third person is or may become liable to him, transfers it in payment of a precedent debt of his own; or for a new consideration, and in connection with such transfer enters into a promise respecting such instrument.

Code Civ. Proc. § 1478.

note 1624

§ 2795. A mere offer to guaranty is not binding, until notice of its acceptance is communicated by the guarantee to the guarantor; but an absolute guaranty is binding upon the guarantor without notice of acceptance.

ARTICLE III.

INTERPRETATION OF GUARANTY.

SECTION 2799. Guaranty of incomplete contract.

2800. Guaranty that an obligation is good or collectible

2801. Recovery upon such guaranty.

2802. Guarantor's liability upon such guaranty.

§ 2799. In a guaranty of a contract, the terms of which are not then settled, it is implied that its terms shall be such as will not expose the guarantor to greater risks than he would incur under those terms which are most common in similar contracts at the place where the principal contract is to be performed.

§ 2800. A guaranty to the effect that an obligation is good, or is collectible, imports that the debtor is solvent, and that the demand is collectible by the usual legal proceedings, if taken with reasonable diligence.

§ 2801. A guaranty, such as is mentioned in the last section, is not discharged by an omission to take proceedings upon the principal debt, or upon any collateral security for its payment, if no part of the debt could have been collected thereby.

§ 2802. In the cases mentioned in section 2800, the re

removal of the principal from the State, leaving no property therein from which the obligation might be satisfied, is equivalent to the insolvency of the principal in its effect upon the rights and obligations of the guarantor.

ARTICLE IV.

LIABILITY OF GUARANTORS.

SECTION 2806. Guaranty, how construed.

2807. Liability upon guaranty of payment or performance.

2808. Liability upon guaranty of a conditional obligation.

2809. Obligation of guarantor cannot exceed that of the principal.

2810. Guarantor not liable on an illegal contract.

§ 2806. A guaranty is to be deemed unconditional unless its terms import some condition precedent to the liability of the guarantor.

§ 2807. A guarantor of payment or performance is liable to the guarantee immediately upon the default of the principal, and without demand or notice.

§ 2808. Where one guarantees a conditional obligation, his liability is commensurate with that of the principal, and he is not entitled to notice of the default of the principal, unless he is unable, by the exercise of reasonable diligence, to acquire information of such default, and the creditor has actual notice thereof.

§ 2809. The obligation of a guarantor must be neither larger in amount nor in other respects more burdensome than that of the principal; and if in its terms it exceeds it, it is reducible in proportion to the principal obligation.

§ 2810. A guarantor is not liable if the contract of the principal is unlawful; but he is liable notwithstanding any mere personal disability of the principal, though the disability be such as to make the contract void against the principal.

ARTICLE V.

CONTINUING GUARANTY.

SECTION 2814. Continuing guaranty, what.

2815. Revocation.

§ 2814. A guaranty relating to a future liability of the principal, under successive transactions, which either continue his liability or from time to time renew it after it has been satisfied, is called a continuing guaranty.

§ 2815. A continuing guaranty may be revoked at any time by the guarantor, in respect to future transactions, unless there is a continuing consideration as to such transactions which he does not renounce.

ARTICLE VI.

EXONERATION OF GUARANTORS.

SECTION 2819. What dealings with debtor exonerate guarantor.

2820. Void promises.

2821. Rescission of alteration.

2822. Part performance.

2823. Delay of creditor does not discharge guarantor

2824. Guarantor indemnified by the debtor, not exonerated.

2825. Discharge of principal by act of law does not discharge guarantor.

§ 2819. A guarantor is exonerated, except so far as he may be indemnified by the principal, if by any act of the creditor, without the consent of the guarantor, the original obligation of the principal is altered in any respect, or the remedies or rights of the creditor against the principal, in respect thereto, in any way impaired or suspended.

§ 2820. A promise by a creditor, which for any cause is void, or voidable by him at his option, does not alter the obligation or suspend or impair the remedy, within the meaning of the last section.

§ 2821. The rescission of an agreement altering the original obligation of a debtor, or impairing the remedy of a cred-

itor, does not restore the liability of a guarantor who has been exonerated by such agreement.

§ 2822. The acceptance, by a creditor, of anything in partial satisfaction of an obligation, reduces the obligation of a guarantor thereof, in the same measure as that of the principal, but does not otherwise affect it.

§ 2823. Mere delay on the part of a creditor to proceed against the principal, or to enforce any other remedy, does not exonerate a guarantor.

§ 2824. A guarantor, who has been indemnified by the principal, is liable to the creditor to the extent of the indemnity, notwithstanding that the creditor, without the assent of the guarantor, may have modified the contract or released the principal.

§ 2825. A guarantor is not exonerated by the discharge of his principal by operation of law, without the intervention or omission of the creditor.

CHAPTER II.

SURETYSHIP.

- ARTICLE I. WHO ARE SURETIES, §§ 2831-2832.
 II. LIABILITY OF SURETIES, §§ 2833-2840.
 III. RIGHTS OF SURETIES, §§ 2844-2850.
 IV. RIGHTS OF CREDITORS, § 2854.
 V. LETTER OF CREDIT, §§ 2859-2866.

ARTICLE I.

WHO ARE SURETIES.

SECTION 2831. Surety, what.

2832. Apparent principal may show that he is surety.

§ 2831. A surety is one who at the request of another, and for the purpose of securing to him a benefit, becomes responsible for the performance by the latter of some act in favor of a third person, or hypothecates property as security therefor.

§ 2832. One who appears to be a principal, whether by the terms of a written instrument or otherwise, may show that he is in fact a surety, except as against persons who have acted on the faith of his apparent character of principal.
55 Cal. 342.

ARTICLE II.

LIABILITY OF SURETIES.

SECTION 2836. Limit of surety's obligation.

2837. Rules of interpretation.

2838. Judgment against surety does not alter the relation.

2839. Surety exonerated by performance or offer of performance

2840. Surety discharged by certain acts of the creditor.

§ 2836. A surety cannot be held beyond the express terms of his contract, and if such contract prescribes a penalty for its breach, he cannot in any case be liable for more than the penalty.

§ 2837. In interpreting the terms of a contract of suretyship, the same rules are to be observed as in the case of other contracts.

§ 2838. Notwithstanding the recovery of judgment by a creditor against a surety, the latter still occupies the relation of surety.

§ 2839. Performance of the principal obligation, or an offer of such performance, duly made as provided in this Code, exonerates a surety. [In effect July 1, 1874.]

§ 2840. A surety is exonerated :

1. In like manner with a guarantor ;
2. To the extent to which he is prejudiced by any act of the creditor which would naturally prove injurious to the remedies of the surety or inconsistent with his rights, or which lessens his security ; or,
3. To the extent to which he is prejudiced by an omission of the creditor to do anything, when required by the surety which it is his duty to do.

ARTICLE III.

RIGHTS OF SURETIES.

SECTION 2844. Surety has rights of guarantor.

2845. Surety may require the creditor to proceed against the principal.

2846. Surety may compel principal to perform obligations, when due.

2847. A principal bound to reimburse his surety.

2848. The surety acquires the right of the creditor.

2849. Surety entitled to benefit of securities held by creditor.

2850 The property of principal to be taken first.

§ 2844. A surety has all the rights of a guarantor, whether he become personally responsible or not.

§ 2845. A surety may require his creditor to proceed against the principal, or to pursue any other remedy in his power which the surety cannot himself pursue, and which would lighten his burden; and if in such case the creditor neglects to do so, the surety is exonerated to the extent to which he is thereby prejudiced.

53 Cal. 689.

§ 2846. A surety may compel his principal to perform the obligation when due.

§ 2847. If a surety satisfies the principal obligation, or any part thereof, whether with or without legal proceedings, the principal is bound to reimburse what he has disbursed, including necessary costs and expenses; but the surety has no claim for reimbursement against other persons, though they may have been benefited by his act, except as prescribed by the next section.

§ 2848. A surety, upon satisfying the obligation of the principal, is entitled to enforce every remedy which the creditor then has against the principal to the extent of reimbursing what he has expended, and also to require all his co-sureties to contribute thereto, without regard to the order of time in which they became such.

§ 2849. A surety is entitled to the benefit of every security for the performance of the principal obligation held by the creditor, or by a co-surety at the time of entering into the contract of suretyship, or acquired by him afterwards, whether the surety was aware of the security or not.

§ 2850. Whenever property of a surety is hypothecated with property of the principal, the surety is entitled to have the property of the principal first applied to the discharge of the obligation.

ARTICLE IV.

RIGHTS OF CREDITORS.

SECTION 2854. Creditor entitled to benefit of securities held by surety.

§ 2854. A creditor is entitled to the benefit of everything which a surety has received from the debtor by way of security for the performance of the obligation, and may, upon the maturity of the obligation, compel the application of such security to its satisfaction.

ARTICLE V.

LETTER OF CREDIT.

SECTION 2858. Letter of credit, what.

2859. How addressed.

2860. Liability of the writer.

2861. Letters of credit, either general or special.

2862. Nature of general letter of credit.

2863. Extent of general letter of credit.

2864. A letter of credit may be a continuing guaranty.

2865. When notice to the writer necessary.

2866. The credit given must agree with the terms of the letter.

§ 2858. A letter of credit is a written instrument, addressed by one person to another, requesting the latter to give credit to the person in whose favor it is drawn.

§ 2859. A letter of credit may be addressed to several persons in succession.

§ 2860. The writer of a letter of credit is, upon the default of the debtor, liable to those who gave credit in compliance with its terms.

§ 2861. A letter of credit is either general or special. When the request for credit in a letter is addressed to specified persons by name or description, the letter is special. All other letters of credit are general.

§ 2862. A general letter of credit gives any person to whom it may be shown authority to comply with its request, and by his so doing it becomes, as to him, of the same effect as if addressed to him by name.

§ 2863. Several persons may successively give credit upon a general letter.

§ 2864. If the parties to a letter of credit appear, by its terms, to contemplate a course of future dealing between the parties, it is not exhausted by giving a credit, even to the amount limited by the letter, which is subsequently reduced or satisfied by payments made by the debtor, but is to be deemed a continuing guaranty.

§ 2865. The writer of a letter of credit is liable for credit given upon it without notice to him, unless its terms express or imply the necessity of giving notice.

§ 2866. If a letter of credit prescribes the persons by whom, or the mode in which, the credit is to be given, or the term of credit, or limits the amount thereof, the writer is not bound except for transactions which, in these respects, conform strictly to the terms of the letter.

TITLE XIV.

LIEN.

CHAPTER I. LIENS IN GENERAL, §§ 2872-2913.

II. MORTGAGE, §§ 2920-2971.

III. PLEDGE, §§ 2986-3011.

IV. BOTTOMRY, §§ 3017-3029.

V. RESPONDENTIA, §§ 3036-3040.

VI. OTHER LIENS, §§ 3046-3060.

VII. STOPPAGE IN TRANSIT, §§ 3076-3080.

CHAPTER I. LIENS IN GENERAL.

- ARTICLE I. DEFINITION OF LIENS, §§ 2872-2877.
 II. CREATION OF LIENS, §§ 2881-2884.
 III. EFFECT OF LIENS, §§ 2888-2892.
 IV. PRIORITY OF LIENS, §§ 2897-2899.
 V. REDEMPTION FROM LIENS, §§ 2903-2905.
 VI. EXTINCTION OF LIENS, §§ 2909-2918.

ARTICLE I.

DEFINITION OF LIENS.

- SECTION 2872. Lien, what.
 2873. Liens, general or special.
 2874. General lien, what.
 2875. Special lien, what.
 2876. Prior liens.
 2877. Contracts subject to provisions of this chapter

§ 2872. A lien is a charge imposed in some mode other than by a transfer in trust upon specific property, by which it is made security for the performance of an act. [In effect April 16, 1878.]

But see Code Civ. Proc. § 1180.

§ 2873. Liens are either general or special.

§ 2874. A general lien is one which the holder thereof is entitled to enforce as a security for the performance of all the obligations, or all of a particular class of obligations, which exist in his favor against the owner of the property.

§ 2875. A special lien is one which the holder thereof can enforce only as security for the performance of a particular act or obligation, and of such obligations as may be incidental thereto.

§ 2876. Where the holder of a special lien is compelled to satisfy a prior lien for his own protection, he may enforce payment of the amount so paid by him, as a part of the claim for which his own lien exists.

§ 2877. Contracts of mortgage, pledge, bottomry, or respondentia, are subject to all the provisions of this chapter.

ARTICLE II.

CREATION OF LIENS.

SECTION 2881. Lien, how created.

2882. No lien for claim not due.

2883. Lien on future interest.

2884. Lien may be created by contract.

§ 2881. A lien is created :

1. By contract of the parties, or,
2. By operation of law.

§ 2882. No lien arises by mere operation of law until the time at which the act to be secured thereby ought to be performed.

§ 2883. An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien, or not yet in existence. In such case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing, to the extent of such interest.

§ 2884. A lien may be created by contract, to take immediate effect, as security for the performance of obligations not then in existence.

ARTICLE III.

EFFECT OF LIENS.

SECTION 2888. Lien, or contract for lien, transfers no title.

2889. Certain contracts void.

2890. Creation of lien does not imply personal obligation.

2891. Extent of lien.

2892. Holder of lien not entitled to compensation.

§ 2888. Notwithstanding an agreement to the contrary, a lien, or a contract for a lien, transfers no title to the property subject to the lien.

§ 2889. All contracts for the forfeiture of property subject to a lien, in satisfaction of the obligation secured thereby, and all contracts in restraint of the right of redemption from a lien, are void.

§ 2890. The creation of a lien does not of itself imply that any person is bound to perform the act for which the lien is a security.

§ 2891. The existence of a lien upon property does not of itself entitle the person in whose favor it exists to a lien upon the same property for the performance of any other obligation than that which the lien originally secured.

§ 2892. One who holds property by virtue of a lien thereon, is not entitled to compensation from the owner thereof for any trouble or expense which he incurs respecting it, except to the same extent as a borrower, under sections 1892 and 1893.

ARTICLE IV.

PRIORITY OF LIENS.

SECTION 2897. Priority of liens.

2898. Priority of mortgage for price.

2899. Order of resort to different funds.

§ 2897. Other things being equal, different liens upon the same property have priority according to the time of their creation, except in cases of bottomry and respondentia.

§ 2898. A mortgage given for the price of real property, at the time of its conveyance, has priority over all other liens created against the purchaser, subject to the operation of the recording laws.

§ 2899. Where one has a lien upon several things, and other persons have subordinate liens upon, or interests in, some but not all of the same things, the person having the prior lien, if he can do so without risk of loss to himself, or of injustice to other persons, must resort to the property in the following order on the demand of any party interested :

1. To the things upon which he has an exclusive lien ;
2. To the things which are subject to the fewest subordinate liens ;

3. In like manner inversely to the number of subordinate liens upon the same thing ; and,

4. When several things are within one of the foregoing classes, and subject to the same number of liens, resort must be had, —

(1.) To the things which have not been transferred since the prior lien was created;

(2.) To the things which have been so transferred without a valuable consideration; and,

(3.) To the things which have been so transferred for a valuable consideration in the inverse order of the transfer.

ARTICLE V.

REDEMPTION FROM LIEN.

SECTION 2903. Right to redeem.

2904. Rights of inferior lienor.

2905. Redemption from lien, how made.

§ 2903. Every person, having an interest in property subject to a lien, has a right to redeem it from the lien, at any time after the claim is due, and before his right of redemption is foreclosed.

§ 2904. One who has a lien inferior to another, upon the same property, has a right:

1. To redeem the property in the same manner as its owner might, from the superior lien; and,

2. To be subrogated to all the benefits of the superior lien, when necessary for the protection of his interests, upon satisfying the claim secured thereby.

§ 2905. Redemption from a lien is made by performing, or offering to perform, the act for the performance of which it is a security, and paying, or offering to pay, the damages, if any, to which the holder of the lien is entitled for delay.

ARTICLE VI.

EXTINCTION OF LIENS.

SECTION 2909. Lien deemed accessory to the act whose performance it secures.

2910. Extinction by sale or conversion.

2911. Lien extinguished by lapse of time under Statute of Limitations.

2912. Apportionment of lien.

2913. When restoration extinguishes lien.

§ 2909. A lien is to be deemed accessory to the act for the performance of which it is a security, whether any person is bound for such performance or not, and is extinguishable in like manner with any other accessory obligation.

§ 2910. The sale of any property on which there is a lien, in satisfaction of the claim secured thereby, or in case of personal property, its wrongful conversion by the person holding the lien, extinguishes the lien thereon.

§ 2911. A lien is extinguished by the lapse of the time within which, under the provisions of the Code of Civil Procedure, an action can be brought upon the principal obligation. [§§ 335-347.]

56 Cal. 848; 58 Cal. 151.

§ 2912. The partial performance of an act secured by a lien does not extinguish the lien upon any part of the property subject thereto, even if it is divisible.

§ 2913. The voluntary restoration of property to its owner by the holder of a lien thereon, dependent upon possession, extinguishes the lien as to such property, unless otherwise agreed by the parties, and extinguishes it, notwithstanding any such agreement, as to creditors of the owner and persons subsequently acquiring a title to the property, or a lien thereon, in good faith, and for a good consideration. [In effect July 1, 1874.]

CHAPTER II.

MORTGAGE.

ARTICLE I. MORTGAGES IN GENERAL, §§ 2920-2942.

II. MORTGAGES OF REAL PROPERTY, §§ 2947-2952.

III. MORTGAGES OF PERSONAL PROPERTY, §§ 2955-2971

ARTICLE I.

SECTION 2920. Mortgage, what.

2921. Property adversely held may be mortgaged.

2922. To be in writing.

2923. Lien of a mortgage, when special.

- Section 2924.** Transfer of interest, when deemed a mortgage.
2925. Transfer made subject to defeasance may be proved.
2926. Mortgage on what a lien.
2927. Mortgage does not entitle mortgagee to possession.
2928. Mortgage not a personal obligation.
2929. Waste.
2930. Subsequently acquired title enures to mortgagee.
2931. Foreclosure.
2932. Power of sale.
2933. Power of attorney to execute.
2934. Recording assignment of mortgage.
2935. Recording assignment of mortgage not notice to mortgagor.
2936. Mortgage passes by assignment of debt.
2937. Time allowed for filing mortgage for record. (Repealed.)
2938. Mortgage, how discharged.
2939. Same.
2940. Same.
2941. Duty of mortgagee on satisfaction of mortgage.
2942. Provisions of this chapter do not affect bottomry or respondentia.

§ 2920. Mortgage is a contract by which specific property is hypothecated for the performance of an act, without the necessity of a change of possession.

58 Cal. 15.

§ 2921. A mortgage may be created upon property held adversely to the mortgagor.

§ 2922. A mortgage can be created, renewed, or extended, only by writing, executed with the formalities required in the case of a grant of real property.

58 Cal. 680; 56 Cal. 344; 57 Cal. 471.

§ 2923. The lien of a mortgage is special, unless otherwise expressly agreed, and is independent of possession.

§ 2924. Every transfer of an interest in property, other than in trust, made only as a security for the performance of another act, is to be deemed a mortgage, except when in the case of personal property it is accompanied by actual change of possession, in which case it is deemed a pledge. [In effect July 1, 1874.]

58 Cal. 15.

§ 2925. The fact that a transfer was made subject to defeasance on a condition, may, for the purpose of showing such transfer to be a mortgage, be proved (except as against a subsequent purchaser or incumbrancer for value and without notice), though the fact does not appear by the terms of the instrument.

58 Cal. 11, 18.

§ 2926. A mortgage is a lien upon everything that would pass by a grant of the property.

§ 2927. A mortgage does not entitle the mortgagee to the possession of the property, unless authorized by the express terms of the mortgage; but after the execution of the mortgage the mortgagor may agree to such change of possession without a new consideration.

§ 2928. A mortgage does not bind the mortgagor personally to perform the act for the performance of which it is a security, unless there is an express covenant therein to that effect.

§ 2929. No person whose interest is subject to the lien of a mortgage may do any act which will substantially impair the mortgagee's security.

§ 2930. Title acquired by the mortgagor subsequent to the execution of the mortgage enures to the mortgagee as security for the debt, in like manner as if acquired before the execution. [In effect July 1, 1874.]

52 Cal. 335.

§ 2931. A mortgagee may foreclose the right of redemption of the mortgagor in the manner prescribed by the Code of Civil Procedure.

Code Civ. Proc. §§ 392, 564, 726-728, 744.

§ 2932. A power of sale may be conferred by a mortgage upon the mortgagee or any other person, to be exercised after a breach of the obligation for which the mortgage is a security.

§ 2933. A power of attorney to execute a mortgage must be in writing, subscribed, acknowledged, or proved, certified, and recorded in like manner as powers of attorney for grants of real property.

§ 2934. An assignment of a mortgage may be recorded in like manner as a mortgage, and such record operates as notice to all persons subsequently deriving title to the mortgage from the assignor. [In effect July 1, 1874.]

§ 2935. When the mortgage is executed as security for

money due, or to become due, on a promissory note, bond, or other instrument, designated in the mortgage, the record of the assignment of the mortgage is not, of itself, notice to a mortgagor, his heirs, or personal representatives, so as to invalidate any payment made by them, or either of them, to the person holding such note, bond, or other instrument. [In effect July 1, 1874.]

§ 2936. The assignment of a debt secured by mortgage carries with it the security.

§ 2937 of said Code is repealed. [In effect July 1, 1874.]

§ 2938. A recorded mortgage may be discharged by an entry in the margin of the record thereof, signed by the mortgagee, or his personal representative or assignee, acknowledging the satisfaction of the mortgage in the presence of the recorder, who must certify the acknowledgment in form substantially as follows: "Signed and acknowledged before me, this — day of —, in the year —.

A B, Recorder."

§ 2939. A recorded mortgage, if not discharged as provided in the preceding section, must be discharged upon the record by the officer having custody thereof, on the presentation to him of a certificate signed by the mortgagee, his personal representatives, or assigns, acknowledged or proved and certified as prescribed by the Chapter on Recording Transfers, stating that the mortgage has been paid, satisfied, or discharged.

§ 2940. A certificate of the discharge of a mortgage, and the proof or acknowledgment thereof, must be recorded at length, and a reference made in the record to the book and page where the mortgage is recorded, and in the minute of the discharge made upon the record of the mortgage to the book and page where the discharge is recorded.

§ 2941. When any mortgage has been satisfied, the mortgagee or his assignee must immediately, on demand of the mortgagor, execute, acknowledge, and deliver to him a certificate of the discharge thereof, so as to entitle it to be recorded, or he must enter satisfaction, or cause satisfaction of such mortgage to be entered of record; and any mortgagee, or

assignee of such mortgage, who refuses to execute, acknowledge, and deliver to the mortgagor the certificate of discharge, or to enter satisfaction or cause satisfaction of the mortgage to be entered, as provided in this chapter, is liable to the mortgagor, or his grantee or heirs, for all damages which he or they may sustain by reason of such refusal, and shall also forfeit to him, or them the sum of one hundred dollars. [In effect April 15, 1880.]

§ 2942. Contracts of bottomry or respondentia, although in the nature of mortgages, are not affected by any of the provisions of this chapter.

ARTICLE II.

MORTGAGE OF REAL PROPERTY.

SECTION 2947. What real property may be mortgaged.

2948. Form of mortgage.

2949. What must be recorded as a mortgage. (Repealed.)

2950. Defeasance, to affect grant absolute on its face, must be recorded.

2951. By whom paid after property passes by succession or will (Repealed.)

2952. May be recorded.

§ 2947. Any interest in real property which is capable of being transferred may be mortgaged.

§ 2948. A mortgage of real property may be made in substantially the following form :

" This mortgage, made the — day of —, in the year —, by A B, of —, mortgagor, to C D, of —, mortgagee, witnesseth :

" That the mortgagor mortgages to the mortgagee [here describe the property], as security for the payment to him of — dollars, on [or before] the — day of —, in the year —, with interest thereon [or as security for the payment of an obligation, describing it, &c.].

A B."

§ 2949 of said Code is repealed. [In effect July 1, 1874.]

§ 2950. When a grant of real property purports to be an absolute conveyance, but is intended to be defeasible on the performance of certain conditions, such grant is not defeated or affected as against any person other than the grantee or his heirs or devisees, or persons having actual notice, unless an

instrument of defeasance, duly executed and acknowledged, shall have been recorded in the office of the county recorder of the county where the property is situated.

§ 2951 of said Code is repealed. [In effect July 1, 1874.]

§ 2952. Mortgages of real property may be acknowledged or proved, certified and recorded, in like manner and with like effect as grants thereof. [In effect July 1, 1874.]

46 Cal. 607. Fees for Acknowledgment and Recording. Pol. Code, §§ 736, 4235, 4245.

ARTICLE III.

MORTGAGE OF PERSONAL PROPERTY.

- SECTION 2955.** What personal property may be mortgaged.
 2956. Form of personal mortgage.
 2957. When void as to third persons.
 2958. Mortgage of ships, when void as to third persons.
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 2963. Personal mortgage may be recorded.
 2964. Certified copies may be recorded, when.
 2965. Property exempt from effect of mortgage, when.
 2966. May be taken by mortgagee as a pledge, when.
 2967. How foreclosed.
 2968. Mortgage property may be levied upon.
 2969. Limitations on right of levy.
 2970. Distribution of proceeds of sale under process.
 2971. Sections not applicable to mortgage of certain ships.
 2972. Lien of a mortgage on growing crop.

§ 2955. Mortgages may be made upon: First, locomotives, engines, and other rolling-stock of a railroad; second, steamboat machinery, the machinery used by machinists, foundry-men, and mechanics; third, steam-engines and boilers; fourth, mining machinery; fifth, printing presses and material; sixth, professional libraries; seventh, instruments of a surveyor, physician, or dentist; eighth, upholstery and furniture used in hotels, lodging or boarding-houses, when mortgaged to secure the purchase money of the articles mortgaged; ninth, growing crops; tenth, vessels of more than five tons burden; eleventh, instruments, negatives, furniture, and fixtures of a photograph gallery; twelfth, the machinery, vasks, pipes, tubes, and utensils used in the manufacture of wine, fruit brandy, and fruit syrup or sugar. [In effect May 31 1878.]

§ 2956. A mortgage of personal property may be made in substantially the following form :

"This mortgage, made the — day of —, in the year —, by A B, of —, by occupation a —, mortgagor, to C D, of —, by occupation a —, mortgagee, witnesseth :

"That the mortgagor mortgages to the mortgagee [here describe the property], as security for the payment to him of — dollars, on [or before] the — day of —, in the year —, with interest thereon [or, as security for the payment of a note or obligation, describing it, &c.].
A B."

§ 2957. A mortgage of personal property is void as against creditors of the mortgagor and subsequent purchasers and incumbrancers of the property in good faith and for value, unless :

1. It is accompanied by the affidavit of all the parties thereto that it is made in good faith and without any design to hinder, delay, or defraud creditors ;

2. It is acknowledged or proved, certified and recorded, in like manner as grants of real property.

§ 2958. A mortgage of any vessel or part of any vessel under the flag of the United States is void as against any person (other than the mortgagor, his heirs, and devisees, and persons having actual notice thereof), unless the mortgage is recorded in the office of the collector of customs where such vessel is registered or enrolled.

§ 2959. A mortgage of personal property must be recorded in the office of the county recorder of the county in which the mortgagor resides, and also of the county in which the property mortgaged is situated, or to which it may be removed.

Pol. Code, § 4235.

§ 2960. For the purposes of this article, property in transit from the possession of the mortgagee to the county of the residence of the mortgagor, or to a location for use, is, during a reasonable time for such transportation, to be taken as situated in the county in which the mortgagor resides, or where it is intended to be used.

§ 2961. For a like purpose, personal property used in conducting the business of a common carrier is to be taken as

situated in the county in which the principal office or place of business of the carrier is located.

§ 2962. A single mortgage of personal property, embracing several things of such character or so situated that by the provisions of this article separate mortgages upon them would be required to be recorded in different places, is only valid in respect to the things as to which it is duly recorded.

§ 2963. Except as it is otherwise in this article provided, mortgages of personal property may be acknowledged, or proved and certified, recorded in like manner and with like effect as grants of real property; but they must be recorded in books kept for personal mortgages exclusively.

§ 2964. A certified copy of a mortgage of personal property once recorded may be recorded in any other county, and when so recorded the record thereof has the same force and effect as though it was of the original mortgage.

§ 2965. When personal property mortgaged is thereafter by the mortgagor removed from the county in which it is situated, it is, except as between the parties to the mortgage, exempted from the operation thereof, unless either:

1. The mortgagee, within thirty days after such removal, causes the mortgage to be recorded in the county to which the property has been removed; or,

2. The mortgagee, within thirty days after such removal, takes possession of the property, as prescribed in the next section.

§ 2966. If the mortgagor voluntarily removes or permits the removal of the mortgaged property from the county in which it was situated at the time it was mortgaged, the mortgagee may take possession and dispose of the property as a pledge for the payment of the debt, though the debt is not due.

§ 2967. A mortgagee of personal property, when the debt to secure which the mortgage was executed becomes due, may foreclose the mortgagor's right of redemption by a sale of the property, made in the manner and upon the notice prescribed by the Title on Pledge, or by proceedings under the Code of Civil Procedure. [§§ 726-728.]

§ 2968. Personal property mortgaged may be taken under attachment or execution issued at the suit of a creditor of the mortgagor.

56 Cal. 218.

§ 2969. Before the property is so taken, the officer must pay or tender to the mortgagee the amount of the mortgage debt and interest, or must deposit the amount thereof with the county clerk or treasurer, payable to the order of the mortgagee.

56 Cal. 218.

§ 2970. When the property thus taken is sold under process, the officer must apply the proceeds of the sale as follows:

1. To the repayment of the sum paid to the mortgagee, with interest from the date of such payment; and,
2. The balance, if any, in like manner as the proceeds of sales under execution are applied in other cases.

§ 2971. Sections 2957, 2959, 2960, 2961, 2962, 2963, 2964, 2965, and 2966 do not apply to any mortgage of a ship or part of a ship under the flag of the United States.

§ 2972. The lien of a mortgage on a growing crop continues on the crop after severance, whether remaining in its original state or converted into another product, so long as the same remains on the land of mortgagor. [In effect April 1, 1878.]

CHAPTER III.

PLEDGE.

SECTION 2986. Pledge, what.

2987. When contract is to be deemed a pledge

2988. Delivery essential to validity of pledge.

2989. Increase of thing.

2990. Lienor may pledge property to extent of his lien.

2991. Real owner cannot defeat pledge of property transferred to apparent owner for the purpose of pledge.

2992. Pledge lender, what.

2993. Pledge holder, what.

2994. When pledge lender may withdraw property pledged.

2995. Obligations of pledge holder.

2996. Pledge holder must enforce rights of pledgee.

2997. Obligation of pledgee and pledge holder, for reward.

2998. Gratuitous pledge holder.

2999. Debtor's misrepresentation of value of pledge

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3001. When pledgee must demand performance.
3002. Notice of sale to pledgor.
3003. Waiver of notice of sale.
3004. Waiver of demand.
3005. Sale must be by auction.
3006. Pledgee's sale of securities.
3007. Sale on the demand of the pledgor.
3008. Surplus to be paid to pledgor.
3009. Same.
3010. Pledgee's purchase of property pledged.
3011. Pledgee may foreclose right of redemption.

§ 2986. Pledge is a deposit of personal property by way of security for the performance of another act.

§ 2987. Every contract by which the possession of personal property is transferred, as security only, is to be deemed a pledge.

§ 2988. The lien of a pledge is dependent on possession, and no pledge is valid until the property pledged is delivered to the pledgee, or to a pledge holder, as hereafter prescribed.

§ 2989. The increase of property pledged is pledged with the property.

§ 2990. One who has a lien upon property may pledge it to the extent of his lien.

§ 2991. One who has allowed another to assume the apparent ownership of property for the purpose of making any transfer of it, cannot set up his own title to defeat a pledge of the property, made by the other to a pledgee who received the property in good faith, in the ordinary course of business, and for value.

52 Cal. 616.

§ 2992. Property may be pledged as security for the obligation of another person than the owner, and in so doing the owner has all the rights of a pledgor for himself, except as hereinafter stated.

§ 2993. A pledgor and pledgee may agree upon a third person with whom to deposit the property pledged, who, if he accepts the deposit, is called a pledge holder.

§ 2994. One who pledges property as security for the obligation of another, cannot withdraw the property pledged

otherwise than as a pledgor for himself might, and if he receives from the debtor a consideration for the pledge he cannot withdraw it without his consent.

§ 2995. A pledge holder for reward cannot exonerate himself from his undertaking; and a gratuitous pledge holder can do so only by giving reasonable notice to the pledgor and pledgee to appoint a new pledge holder, and in case of their failure to agree, by depositing the property pledged with some impartial person, who will then be entitled to a reasonable compensation for his care of the same.

§ 2996. A pledge holder must enforce all the rights of the pledgee, unless authorized by him to waive them.

§ 2997. A pledgee, or a pledge holder for reward, assumes the duties and liabilities of a depositary for reward.

§ 2998. A gratuitous pledge holder assumes the duties and liabilities of a gratuitous depositary.

§ 2999. Where a debtor has obtained credit, or an extension of time, by a fraudulent misrepresentation of the value of property pledged by or for him, the creditor may demand a further pledge to correspond with the value represented; and in default thereof may recover his debt immediately, though it be not actually due.

§ 3000. When performance of the act for which a pledge is given is due, in whole or in part, the pledgee may collect what is due to him by a sale of property pledged, subject to the rules and exceptions hereinafter prescribed.

§ 3001. Before property pledged can be sold, and after performance of the act for which it is security is due, the pledgee must demand performance thereof from the debtor, if the debtor can be found. [In effect July 1, 1874.]

§ 3002. A pledgee must give actual notice to the pledgor of the time and place at which the property pledged will be sold, at such a reasonable time before the sale as will enable the pledgor to attend.

§ 3003. Notice of sale may be waived by a pledgor at any time; but is not waived by a mere waiver of demand of performance.

§ 3004. A debtor or pledgor waives a demand of performance as a condition precedent to a sale of the property pledged, by a positive refusal to perform, after performance is due; but cannot waive it in any other manner except by contract.

§ 3005. The sale by a pledgee, of property pledged, must be made by public auction, in the manner and upon the notice to the public usual at the place of sale, in respect to auction sales of similar property; and must be for the highest obtainable price.

§ 3006. A pledgee cannot sell any evidence of debt pledged to him, except the obligations of governments, states, or corporations; but he may collect the same when due.

§ 3007. Whenever property pledged can be sold for a price sufficient to satisfy the claim of the pledgee, the pledgor may require it to be sold, and its proceeds to be applied to such satisfaction, when due.

§ 3008. After a pledgee has lawfully sold property pledged, or otherwise collected its proceeds, he may deduct therefrom the amount due under the principal obligation, and the necessary expenses of sale and collection, and must pay the surplus to the pledgor, on demand.

§ 3009. When property pledged is sold by order of the pledgor before the claim of the pledgee is due, the latter may retain out of the proceeds all that can possibly become due under his claim until it becomes due. [In effect July 1, 1874.]

§ 3010. A pledgee, or pledge holder, cannot purchase the property pledged, except by direct dealing with the pledgor.

§ 3011. Instead of selling property pledged, as hereinbefore provided, a pledgee may foreclose the right of redemption by a judicial sale, under the direction of a competent court; and in that case may be authorized by the court to purchase at the sale.

Pawnbrokers. Penal Code, §§ 333-343.

CHAPTER IV.

BOTTOMRY.

SECTION 3017. Bottomry, what.

3018. Owner of ship may hypothecate.

3019. When master may hypothecate ship.

3020. Same.

3021. When master may hypothecate freight money.

3022. Rate of interest.

3023. Rights of lender, when no necessity for bottomry existed.

3024. Stipulation for personal liability void.

3025. When money loaned is to be repaid.

3026. When bottomry loan becomes due.

3027. Bottomry lien, how lost.

3028. Preference of bottomry lien over other liens.

3029. Priority of bottomry liens.

§ 3017. Bottomry is a contract by which a ship or its freightage is hypothecated as security for a loan, which is to be repaid only in case the ship survives a particular risk, voyage, or period.

§ 3018. The owner of a ship may hypothecate it or its freightage, upon bottomry, for any lawful purpose, and at any time and place.

§ 3019. The master of a ship may hypothecate it upon bottomry only for the purpose of procuring repairs or supplies which are necessary for accomplishing the objects of the voyage, or for securing the safety of the ship.

§ 3020. The master of a ship can hypothecate it upon bottomry only when he cannot otherwise relieve the necessities of the ship, and is unable to reach adequate funds of the owner, or to obtain any upon the personal credit of the owner, and when previous communication with him is precluded by the urgent necessity of the case.

§ 3021. The master of a ship may hypothecate freightage upon bottomry, under the same circumstances as those which authorize an hypothecation of the ship by him.

§ 3022. Upon a contract of bottomry, the parties may lawfully stipulate for a rate of interest higher than that al

lowed by the law upon other contracts. But a competent court may reduce the rate stipulated when it appears unjustifiable and exorbitant.

§ 3023. A lender upon a contract of bottomry, made by the master of a ship, as such, may enforce the contract, though the circumstances necessary to authorize the master to hypothecate the ship did not in fact exist, if, after due diligence and inquiry, the lender had reasonable grounds to believe, and did in good faith believe, in the existence of such circumstances.

§ 3024. A stipulation in a contract of bottomry, imposing any liability for the loan independent of the maritime risks, is void.

§ 3025. In case of a total loss of the thing hypothecated, from a risk to which the loan was subject, the lender upon bottomry can recover nothing; in case of a partial loss, he can recover only to the extent of the net value to the owner of the part saved.

§ 3026. Unless it is otherwise expressly agreed, a bottomry loan becomes due immediately upon the termination of the risk, although a term of credit is specified in the contract.

§ 3027. A bottomry lien is independent of possession, and is lost by omission to enforce it within a reasonable time.

§ 3028. A bottomry lien, if created out of a real or apparent necessity, in good faith, is preferred to every other lien or claim upon the same thing, excepting only a lien for seamen's wages, a subsequent lien of material men for supplies or repairs indispensable to the safety of the ship, and a subsequent lien for salvage.

§ 3029. Of two or more bottomry liens on the same subject, the latter in date has preference, if created out of necessity.

CHAPTER V.

RESPONDENTIA.

- SECTION 3036. Respondentia, what.
3037. Respondentia by owner.
3038. Respondentia by master.
3039. Rate of interest.
3040. Obligations of ship owner.

§ 3036. Respondentia is a contract by which a cargo, or some part thereof, is hypothecated as security for a loan, the repayment of which is dependent on maritime risks.

§ 3037. The owner of cargo may hypothecate it upon respondentia, at any time and place, and for any lawful purpose.

§ 3038. The master of a ship may hypothecate its cargo upon respondentia only in a case in which he would be authorized to hypothecate the ship and freightage, but is unable to borrow sufficient money thereon for repairs or supplies which are necessary for the successful accomplishment of the voyage; and he cannot do so, even in such case, if there is no reasonable prospect of benefiting the cargo thereby.

§ 3039. The provisions of sections 3022 to 3029 apply equally to loans on respondentia.

§ 3040. The owner of a ship is bound to repay to the owner of its cargo all which the latter is compelled to pay, under a contract of respondentia made by the master, in order to discharge its lien.

CHAPTER VI.

OTHER LIENS.

- SECTION 3046. Lien of seller of real property.
3047. When transfer of contract waives lien.
3048. Extent of seller's lien.
3049. Lien of seller of personal property.
3050. Purchaser's lien on real property
3051. Lien for services

SECTION 3062. Liens on personal property.

- 3063. Lien of factor.
- 3064. Banker's lien.
- 3065. Shipmaster's lien.
- 3066. Seamen's lien.
- 3067. Officer's lien.
- 3068. Judgment lien.
- 3069. Mechanic's lien.
- 3060. Lien on ships.

§ 3046. One who sells real property has a vendor's lien thereon, independent of possession, for so much of the price as remains unpaid and unsecured otherwise than by the personal obligation of the buyer.

56 Cal. 463.

§ 3047. Where a buyer of real property gives to the seller a written contract for payment of all or part of the price, an absolute transfer of such contract by the seller waives his lien to the extent of the sum payable under the contract; but a transfer of such contract in trust to pay debts, and return the surplus, is not a waiver of the lien.

§ 3048. The liens defined in sections 3046 and 3050 are valid against every one claiming under the debtor, except a purchaser or incumbrancer in good faith and for value.

§ 3049. One who sells personal property has a special lien thereon, dependent on possession, for its price, if it is in his possession when the price becomes payable, and may enforce his lien in like manner as if the property was pledged to him for the price.

§ 3050. One who pays to the owner any part of the price of real property, under an agreement for the sale thereof, has a special lien upon the property, independent of possession, for such part of the amount paid as he may be entitled to recover back, in case of a failure of consideration.

§ 3051. Every person who, while lawfully in possession of an article of personal property, renders any service to the owner thereof by labor or skill employed for the protection, improvement, safe keeping, or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to him from the owner for such service. And livery or boarding or feed stable proprietors and persons pasturing horses or stock have a lien dependent on possession for their compensation in caring for, boarding, feeding, or pas-

turing such horses or stock. [In effect May 28, 1878.] Approved March 29, 1878.

53 Cal. 353.

§ 3052. A person who makes, alters, or repairs any article of personal property, at the request of the owner, or legal possessor of the property, has a lien on the same for his reasonable charges for work done and materials furnished, and may retain possession of the same until the charges are paid. If not paid within two months after the work is done, the person may proceed to sell the property at public auction, by giving ten days' public notice of the sale by advertising in some newspaper published in the county in which the work was done; or, if there be no newspaper published in the county, then by posting up notices of the sale in three of the most public places in the town where the work was done, for ten days previous to the sale. The proceeds of the sale must be applied to the discharge of the lien and the cost of keeping and selling the property; the remainder, if any, must be paid over to the owner thereof.

§ 3053. A factor has a general lien, dependent on possession, for all that is due to him as such, upon all articles of commercial value that are intrusted to him by the same principal.

§ 3054. A banker has a general lien, dependent on possession, upon all property in his hands belonging to a customer, for the balance due to him from such customer in the course of the business.

§ 3055. The master of a ship has a general lien, independent of possession, upon the ship and freightage, for advances necessarily made or liabilities necessarily incurred by him for the benefit of the ship, but has no lien for his wages.

§ 3056. The mate and seamen of a ship have a general lien, independent of possession, upon the ship and freightage, for their wages, which is superior to every other lien.

§ 3057. An officer who levies an attachment or execution upon personal property acquires a special lien, dependent on possession, upon such property, which authorizes him to hold it until the process is discharged or satisfied, or a judicial sale of the property is had.

Code Civ. Proc. §§ 642, 688.

§ 3058. The lien of a judgment is regulated by the Code of Civil Procedure.

Code Civ. Proc. §§ 671, 674

§ 3059. The liens of mechanics, for materials and services upon real property, are regulated by the Code of Civil Procedure. [§§ 1183-1199.]

§ 3060. Debts amounting to at least fifty dollars, contracted for the benefit of ships, are liens in the cases provided by the Code of Civil Procedure. [§ 813.]

Lien of Innkeepers and Boarding-house Keepers, see §§ 1861-1868 of this Code. Liens for Wages, &c., Code Civ. Proc. §§ 1204-1206.

CHAPTER VII.

STOPPAGE IN TRANSIT.

SECTION 3076. When consignor may stop goods

3077. What is insolvency of consignee

3078. Transit, when ended.

3079. Stoppage, how effected.

3080. Effect of stoppage.

§ 3076. A seller or consignor of property, whose claim for its price or proceeds has not been extinguished, may, upon the insolvency of the buyer or consignee becoming known to him after parting with the property, stop it while on its transit to the buyer or consignee, and resume possession thereof.

§ 3077. A person is insolvent, within the meaning of the last section, when he ceases to pay his debts in the manner usual with persons of his business, or when he declares his inability or unwillingness to do so.

§ 3078. The transit of property is at an end when it comes into the possession of the consignee, or into that of his agent, unless such agent is employed merely to forward the property to the consignee.

§ 3079. Stoppage in transit can be effected only by notice to the carrier or depository of the property, or by taking actual possession thereof.

§ 3080. Stoppage in transit does not, of itself, rescind a sale, but is a means of enforcing the lien of the seller.

TITLE XV. NEGOTIABLE INSTRUMENTS.

CHAPTER I. NEGOTIABLE INSTRUMENTS IN GENERAL, §§ 3086 3165.

II. BILLS OF EXCHANGE, §§ 3171-3238.

III. PROMISSORY NOTES, §§ 3244-3248.

IV. CHECKS, §§ 3254-3255.

V. BANK NOTES AND CERTIFICATES OF DEPOSIT
§§ 3261-3262.

CHAPTER I. NEGOTIABLE INSTRUMENTS IN GENERAL.

ARTICLE I. GENERAL DEFINITIONS, §§ 3086-3095.

II. INTERPRETATION, §§ 3099-3104.

III. INDORSEMENT, §§ 3108-3125.

IV. PRESENTMENT FOR PAYMENT, §§ 3130-3137.

V. DISHONOR, §§ 3141-3151.

VI. EXCUSE OF PRESENTMENT AND NOTICE, §§ 3155-3160

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ARTICLE I.

GENERAL DEFINITIONS.

SECTION 3086. To what instruments this title is applicable.

3087. Negotiable instrument, what.

3088. Must be for unconditional payment of money

3089. Payee.

3090. Instrument may be in alternative

3091. Date, &c.

3092. May contain a pledge, &c.

3093. What it must not contain.

3094. Date.

3095. Different classes of negotiable instruments.

§ 3086. The provisions of this title apply only to negotiable instruments, as defined in this article.

§ 3087. A negotiable instrument is a written promise or

request for the payment of a certain sum of money to order or bearer, in conformity to the provisions of this article.

§ 3088. A negotiable instrument must be made payable in money only, and without any condition not certain of fulfilment.

§ 3089. The person to whose order a negotiable instrument is made payable must be ascertainable at the time the instrument is made.

§ 3090. A negotiable instrument may give to the payee an option between the payment of the sum specified therein and the performance of another act; but as to the latter, the instrument is not within the provisions of this title.

§ 3091. A negotiable instrument may be with or without date, and with or without designation of the time or place of payment.

§ 3092. A negotiable instrument may contain a pledge of collateral security, with authority to dispose thereof.

§ 3093. A negotiable instrument must not contain any other contract than such as is specified in this article.

§ 3094. Any date may be inserted by the maker of a negotiable instrument, whether past, present, or future, and the instrument is not invalidated by his death or incapacity at the time of the nominal date.

§ 3095. There are six classes of negotiable instruments, namely:

1. Bills of exchange;
2. Promissory notes;
3. Bank notes;
4. Checks;
5. Bonds;
6. Certificates of deposit.

ARTICLE II.

INTERPRETATION OF NEGOTIABLE INSTRUMENTS.

SECTION 3099. Time and place of payment.

3100. Place of payment not specified.

3101. Instruments payable to a person or his order, how construed.

3102. Unindorsed note, when negotiable.

3103. Fictitious payee.

3104. Presumption of consideration.

§ 3099. A negotiable instrument which does not specify the time of payment is payable immediately.

§ 3100. A negotiable instrument which does not specify a place of payment is payable at the residence or place of business of the maker, or wherever he may be found. [In effect July 1, 1874.]

§ 3101. An instrument, otherwise negotiable in form, payable to a person named, but with the words added, "or to his order," or "to bearer," or words equivalent thereto, is in the former case payable to the written order of such person, and in the latter case payable to the bearer.

§ 3102. A negotiable instrument, made payable to the order of the maker, or of a fictitious person, if issued by the maker for a valid consideration, without indorsement, has the same effect against him and all other persons having notice of the facts as if payable to the bearer.

54 Cal. 110.

§ 3103. A negotiable instrument, made payable to the order of a person obviously fictitious, is payable to the bearer

§ 3104. The signature of every drawer, acceptor, and indorser of a negotiable instrument is presumed to have been made for a valuable consideration, before the maturity of the instrument, and in the ordinary course of business.

64 Cal 411

ARTICLE III.

INDORSEMENT.

- SECTION 3108.** Indorsement, what.
 3109. Agreement to indorse.
 3110. When may be made on separate paper.
 3111. Kinds of indorsement.
 3112. General indorsement, what.
 3113. Special indorsement, what.
 3114. General indorsement, how made special
 3115. Destruction of negotiability by indorser
 3116. Implied warranty of indorser.
 3117. Indorser, when liable to payee.
 3118. Indorsement without recourse.
 3119. Same.
 3120. Indorsee privy to contract.
 3121. Rights of accommodation indorser (Repealed.)
 3122. Effect of want of consideration.
 3123. Indorsee in due course, what.
 3124. Rights of indorsee in due course.
 3125. Instrument left blank.

§ 3108. One who writes his name upon a negotiable instrument, otherwise than as a maker or acceptor, and delivers it, with his name thereon, to another person, is called an indorser, and his act is called indorsement.

§ 3109. One who agrees to indorse a negotiable instrument is bound to write his signature upon the back of the instrument, if there is sufficient space thereon for that purpose.

§ 3110. When there is not room for a signature upon the back of a negotiable instrument, a signature equivalent to an indorsement thereof may be made upon a paper annexed thereto.

§ 3111. An indorsement may be general or special.

§ 3112. A general indorsement is one by which no indorsee is named.

§ 3113. A special indorsement specifies the indorsee.

§ 3114. A negotiable instrument bearing a general indorsement cannot be afterwards specially indorsed; but any lawful holder may turn a general indorsement into a special one, by writing above it a direction for payment to a particular person.

§ 3115. A special indorsement may, by express words for that purpose, but not otherwise, be so made as to render the instrument not negotiable.

§ 3116. Every indorser of a negotiable instrument, unless his indorsement is qualified, warrants to every subsequent holder thereof, who is not liable thereon to him :

1. That it is in all respects what it purports to be ;
2. That he has a good title to it ;
3. That the signatures of all prior parties are binding upon them ;
4. That if the instrument is dishonored, the indorser will, upon notice thereof duly given to him, or without notice, where it is excused by law, pay the same with interest, unless exonerated under the provisions of sections thirty-one hundred and eighty-nine, thirty-two hundred and thirteen, thirty-two hundred and forty-eight, or thirty-two hundred and fifty-five. [In effect July 1, 1874.]

§ 3117. One who indorses a negotiable instrument before it is delivered to the payee is liable to the payee thereon, as an indorser.

§ 3118. An indorser may qualify his indorsement with the words, "without recourse," or equivalent words ; and upon such indorsement, he is responsible only to the same extent as in the case of a transfer without indorsement.

§ 3119. Except as otherwise prescribed by the last section, an indorsement, without recourse, has the same effect as any other indorsement.

§ 3120. An indorsee of a negotiable instrument has the same rights against every prior party thereto that he would have had if the contract had been made directly between them in the first instance.

§ 3121 of said Code is repealed. [In effect July 1, 1874.]

§ 3122. The want of consideration for the undertaking of a maker, acceptor, or indorser, of a negotiable instrument does not exonerate him from liability thereon to an indorsee in good faith for a consideration.

§ 3123. An indorsee in due course is one who, in good faith, in the ordinary course of business, and for value, before its apparent maturity or presumptive dishonor, and without knowledge of its actual dishonor, acquires a negotiable instrument duly indorsed to him, or indorsed generally, or payable to the bearer.

54 Cal. 109.

§ 3124. An indorsee of a negotiable instrument, in due course, acquires an absolute title thereto, so that it is valid in his hands, notwithstanding any provision of law making it generally void or voidable, and notwithstanding any defect in the title of the person from whom he acquired it.

Code Civ. Proc. § 868.

§ 3125. One who makes himself a party to an instrument intended to be negotiable, but which is left wholly or partly in blank, for the purpose of filling afterwards, is liable upon the instrument to an indorsee thereof in due course, in whatever manner and at whatever time it may be filled, so long as it remains negotiable in form.

ARTICLE IV.

PRESENTMENT FOR PAYMENT.

SECTION 3130. Effect of want of demand on principal debtor.

3131. Presentment, how made.

3132. Apparent maturity, when.

3133. Presumptive dishonor of bill, payable after sight.

3134. Apparent maturity of bill, payable at sight.

3135. Apparent maturity of note.

3136. Same.

3137. Surrender of instrument, when a condition of payment

§ 3130. It is not necessary to make a demand of payment upon the principal debtor in a negotiable instrument in order to charge him; but if the instrument is by its terms payable at a specified place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to an offer of payment upon his part.

§ 3131. Presentment of a negotiable instrument for payment, when necessary, must be made as follows, as nearly as by reasonable diligence it is practicable:

1st. The instrument must be presented by the holder;

2d. The instrument must be presented to the principal debtor, if he can be found at the place where presentment should be made; and if not, then it must be presented to some other person having charge thereof, or employed therein, if one can be found there;

3d. An instrument which specifies a place for its payment must be presented there; and if the place specified includes more than one house, then at the place of residence or business of the principal debtor, if it can be found therein;

4th. An instrument which does not specify a place for its payment must be presented at the place of residence or business of the principal debtor, or wherever he may be found, at the option of the presenter; and,

5th. The instrument must be presented upon the day of its maturity, or, if it be payable on demand, it may be presented upon any day. It must be presented within reasonable hours; and, if it be payable at a banking house, within the usual banking hours of the vicinity, but, by the consent of the person to whom it should be presented, it may be presented at any hour of the day;

6th. If the principal debtor have no place of business, or if his place of business or residence cannot, with reasonable diligence, be ascertained, presentment for payment is excused. [In effect July 1, 1874.]

§ 3132. The apparent maturity of a negotiable instrument, payable at a particular time, is the day on which, by its terms, it becomes due, or when that is a holiday, the next business day.

§ 3133. A bill of exchange, payable at a certain time after sight, which is not accepted within ten days after its date, in addition to the time which would suffice, with ordinary diligence, to forward it for acceptance, is presumed to have been dishonored.

§ 3134. The apparent maturity of a bill of exchange payable at sight or on demand, is:

1. If it bears interest, one year after its date; or,
2. If it does not bear interest, ten days after its date, in addition to the time which would suffice, with ordinary diligence, to forward it for acceptance.

§ 3135. The apparent maturity of a promissory note payable at sight or on demand, is:

1. If it bears interest, one year after its date ; or,
2. If it does not bear interest, six months after its date.

§ 3136. Where a promissory note is payable at a certain time after sight or demand, such time is to be added to the periods mentioned in the last section.

§ 3137. A party to a negotiable instrument may require, as a condition concurrent to its payment by him :

1. That the instrument be surrendered to him, unless it is lost or destroyed, or the holder has other claims upon it ; or
2. If the holder has a right to retain the instrument and does retain it, then that a receipt for the amount paid, or an exoneration of the party paying, be written thereon ; or,
3. If the instrument is lost or destroyed, then that the holder give to him a bond, executed by himself and two sufficient sureties, to indemnify him against any lawful claim thereon.

ARTICLE V.

DISHONOR OF NEGOTIABLE INSTRUMENTS.

SECTION 3141. Dishonor, what.

3142. Notice, by whom given.

3143. Form of notice.

3144. Notice, how served.

3145. Notice, how served after indorser's death.

3146. Notice given in ignorance of death, valid.

3147. Notice, when to be given.

3148. Notice of dishonor, when to be mailed.

3149. Notice, how given by agent.

3150. Additional time for notice by indorser.

3151. Effect of notice of dishonor.

§ 3141. A negotiable instrument is dishonored, when it is either not paid, or not accepted, according to its tenor, on presentment for the purpose, or without presentment, where that is excused.

§ 3142. Notice of the dishonor of a negotiable instrument may be given :

1. By a holder thereof ; or
2. By any party to the instrument who might be compelled to pay it to the holder, and who would, upon taking it up, have a right to reimbursement from the party to whom the notice is given.

§ 3143. A notice of dishonor may be given in any form which describes the instrument with reasonable certainty, and substantially informs the party receiving it that the instrument has been dishonored.

57 Cal. 327.

§ 3144. A notice of dishonor may be given :

1. By delivering it to the party to be charged, personally, at any place ; or,

2. By delivering it to some person of discretion at the place of residence or business of such party, apparently acting for him ; or,

3. By properly folding the notice, directing it to the party to be charged, at his place of residence, according to the best information that the person giving the notice can obtain, depositing it in the post office most conveniently accessible from the place where the presentment was made, and paying the postage thereon.

57 Cal. 327.

§ 3145. In case of the death of a party to whom notice of dishonor should otherwise be given, the notice must be given to one of his personal representatives ; or, if there are none, then to any member of his family who resided with him at his death ; or, if there is none, then it must be mailed to his last place of residence, as prescribed by subdivision 3 of the last section.

§ 3146. A notice of dishonor sent to a party after his death, but in ignorance thereof, and in good faith, is valid.

§ 3147. Notice of dishonor, when given by the holder of an instrument or his agent, otherwise than by mail, must be given on the day of dishonor, or on the next business day thereafter.

§ 3148. When notice of dishonor is given by mail, it must be deposited in the post office in time for the first mail which closes after noon of the first business day succeeding the dishonor, and which leaves the place where the instrument was dishonored, for the place to which the notice should be sent.

§ 3149. When the holder of a negotiable instrument, at the time of its dishonor, is a mere agent for the owner, it is sufficient for him to give notice to his principal in the same manner as to an indorser, and his principal may give notice to

any other party to be charged, as if he were himself an indorser. And if an agent of the owner employs a sub-agent, it is sufficient for each successive agent or sub-agent to give notice in like manner to his own principal.

§ 3150. Every party to a negotiable instrument, receiving notice of its dishonor, has the like time thereafter to give similar notice to prior parties as the original holder had after its dishonor. But this additional time is available only to the particular party entitled thereto.

§ 3151. A notice of the dishonor of a negotiable instrument, if valid in favor of the party giving it, enures to the benefit of all other parties thereto whose right to give the like notice has not then been lost.

ARTICLE VI.

EXCUSE OF PRESENTMENT AND NOTICE.

SECTION 3155. Notice of dishonor, when excused.

3156. Presentment and notice, when excused.

3157. Same.

3158. Delay, when excused.

3159. Waiver of presentment and notice.

3160. Waiver of protest.

§ 3155. Notice of dishonor is excused:

1. When the party by whom it should be given cannot, with reasonable diligence, ascertain either the place of residence or business of the party to be charged; or,

2. When there is no post office communication between the town of the party by whom the notice should be given and the town in which the place of residence or business of the party to be charged is situated; or,

3. When the party to be charged is the same person who dishonors the instrument; or,

4. When the notice is waived by the party entitled thereto.

§ 3156. Presentment and notice are excused as to any party to a negotiable instrument who informs the holder, within ten days before its maturity, that it will be dishonored.

§ 3157. If, before or after the maturity of an instrument, an indorser has received full security for the amount thereof,

or the maker has assigned all his estate to him as such security, presentment and notice to him are excused.

§ 3158. Delay in presentment, or in giving notice of dishonor, is excused when caused by circumstances which the party delaying could not have avoided by the exercise of reasonable care and diligence.

§ 3159. A waiver of presentment waives notice of dishonor also, unless the contrary is expressly stipulated; but a waiver of notice does not waive presentment.

§ 3160. A waiver of protest on any negotiable instrument other than a foreign bill of exchange waives presentment and notice.

ARTICLE VII.

EXTINCTION OF NEGOTIABLE INSTRUMENTS.

SECTION 3164. Obligation of party, when extinguished.

3165. Revival of obligation. (Repealed.)

§ 3164. The obligation of a party to a negotiable instrument is extinguished :

1. In like manner with that of parties to contracts in general; or,

2. By payment of the amount due upon the instrument, at or after its maturity, in good faith and in the ordinary course of business, to any person having actual possession thereof and entitled by its terms to payment.

§ 3165 of said Code is repealed. [In effect July 1, 187-.

CHAPTER II.

BILLS OF EXCHANGE.

ARTICLE I. FORM AND INTERPRETATION, §§ 3171-3177.

II. DAYS OF GRACE, § 3181.

III. PRESENTMENT FOR ACCEPTANCE, §§ 3185-3189.

IV. ACCEPTANCE, §§ 3193-3199.

V. ACCEPTANCE OR PAYMENT FOR HONOR, §§ 3203-3207.

VI. PRESENTMENT FOR PAYMENT, §§ 3211-3214.

VII. EXCUSE OF PRESENTMENT AND NOTICE, §§ 3218-3220.

VIII. FOREIGN BILLS, §§ 3224-3228.

ARTICLE I.

FORM AND INTERPRETATION OF A BILL.

SECTION 3171. Bill of exchange, what.

3172. Drawee, in case of need.

3173. Bill in parts of a set.

3174. When must be in a set.

3175. Presentment, &c., of part of set.

3176. Bill, where payable.

3177. Rights and obligations of drawer.

§ 3171. A bill of exchange is an instrument, negotiable in form, by which one, who is called the drawer, requests another, called the drawee, to pay a specified sum of money.

§ 3172. A bill of exchange may give the name of any person in addition to the drawee, to be resorted to in case of need.

§ 3173. A bill of exchange may be drawn in any number of parts, each part stating the existence of the others, and all forming one set.

§ 3174. An agreement to draw a bill of exchange binds the drawer to execute it in three parts, if the other party to the agreement desires it.

§ 3175. Presentment, acceptance, or payment, of a single part in a set of a bill of exchange, is sufficient for the whole.

§ 3176. A bill of exchange is payable :

1. At the place where, by its terms, it is made payable ; or,
2. If it specify no place of payment, then at the place to which it is addressed ; or,
3. If it be not addressed to any place, then at the place of residence or business of the drawee, or wherever he may be found.

If the drawee has no place of business, or if his place of business or residence [cannot] with reasonable diligence be ascertained, presentment for payment is excused, and the bill may be protested for non-payment. [In effect July 1, 1874.]

§ 3177. The rights and obligations of the drawer of a bill of exchange are the same as those of the first indorser of any other negotiable instrument.

ARTICLE II.

DAYS OF GRACE.

SECTION 3181 Days of grace.

§ 3181. Days of grace are not allowed.

ARTICLE III.

PRESENTMENT FOR ACCEPTANCE.

SECTION 3185. When a bill may be presented.

3186. Presentment, how made.

3187. Presentment to joint drawees.

3188. When presentment to be made to drawee in case of need.

3189. Presentment, when must be made.

§ 3185. At any time before a bill of exchange is payable, the holder may present it to the drawee for acceptance, and if acceptance is refused, the bill is dishonored.

§ 3186. Presentment for acceptance must be made in the following manner, as nearly as by reasonable diligence it is practicable :

1. The bill must be presented by the holder or his agent;
2. It must be presented on a business day, and within reasonable hours ;
3. It must be presented to the drawee, or, if he be absent from his place of residence or business, to some person having charge thereof, or employed therein ; and,
4. The drawee, on such presentment, may postpone his acceptance or refusal until the next day. If the drawee have no place of business, or if his place of business or residence cannot, with reasonable diligence, be ascertained, presentment for acceptance is excused, and the bill may be protested for non-acceptance. [In effect July 1, 1874.]

§ 3187. Presentment for acceptance to one of several joint drawees, and refusal by him, dispenses with presentment to the others.

§ 3188. A bill of exchange which specifies a drawee in case of need, must be presented to him for acceptance or pay

ment, as the case may be, before it can be treated as dishonored.

§ 3189. When a bill of exchange is payable at a specified time after sight, the drawer and indorsers are exonerated if it is not presented for acceptance within ten days after the time which would suffice, with ordinary diligence, to forward it for acceptance, unless presentment is excused.

ARTICLE IV.

ACCEPTANCE.

SECTION 3193. Acceptance, how made.

3194. Holder entitled to acceptance on face of bill.

3195. What acceptance sufficient with consent of holder.

3196. Acceptance by separate instrument.

3197. Promise to accept, when equivalent to acceptance.

3198. Cancellation of acceptance.

3199. What is admitted by acceptance.

§ 3193. An acceptance of a bill must be made in writing, by the drawee or by an acceptor for honor, and may be made by the acceptor writing his name across the face of the bill, with or without other words.

§ 3194. The holder of a bill of exchange, if entitled to an acceptance thereof, may treat the bill as dishonored if the drawee refuses to write across its face an unqualified acceptance.

§ 3195. The holder of a bill of exchange may, without prejudice to his rights against prior parties, receive and treat as a sufficient acceptance :

1. An acceptance written upon any part of the bill, or upon a separate paper ;

2. An acceptance qualified so far only as to make the bill payable at a particular place within the city or town in which, if the acceptance was unqualified, it would be payable ; or,

3. A refusal by the drawee to return the bill to the holder after presentment, in which case the bill is payable immediately, without regard to its terms.

§ 3196. The acceptance of a bill of exchange, by a separate instrument, binds the acceptor to one, who, upon the

faith thereof, has the bill for value or other good consideration.

§ 3197. An unconditional promise, in writing, to accept a bill of exchange, is a sufficient acceptance thereof, in favor of every person who upon the faith thereof has taken the bill for value or other good consideration.

§ 3198. The acceptor of a bill of exchange may cancel his acceptance at any time before delivering the bill to the holder, and before the holder has, with the consent of the acceptor, transferred his title to another person who has given value for it upon the faith of such acceptance.

§ 3199. The acceptance of a bill of exchange admits the signature of a drawer, but does not admit the signature of any indorser to be genuine. [In effect July 1, 1874.]

ARTICLE V.

ACCEPTANCE OR PAYMENT FOR HONOR.

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3204. Holder of bill of exchange bound to accept payment for honor.

3205. Acceptance for honor, how made.

3206. How enforced.

3207 Notice of dishonor not excused by acceptance for honor.

§ 3203. On the dishonor of a bill of exchange by the drawee, and, in case of a foreign bill, after it has been duly protested, it may be accepted or paid by any person, for the honor of any party thereto.

§ 3204. The holder of a bill of exchange is not bound to allow it to be accepted for honor, but is bound to accept payment for honor.

§ 3205. An acceptor or payor for honor must write a memorandum upon the bill, stating therein for whose honor he accepts or pays, and must give notice to such parties, with reasonable diligence, of the fact of such acceptance or payment. Having done so, he is entitled to reimbursement from such parties, and from all parties prior to them.

§ 3206. A bill of exchange which has been accepted for honor must be presented at its maturity to the drawee for payment, and notice of its dishonor by him must be given to the acceptor for honor, in like manner as to an indorser; after which the acceptor for honor must pay the bill.

§ 3207. The acceptance of a bill of exchange for honor does not excuse the holder from giving notice of its dishonor by the drawee.

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3212. Presentment of bill, payable at particular place.

3213. Effect of delay in presentment, in certain cases.

3214. Effect in other cases.

§ 3211. If a bill of exchange is by its terms payable at a particular place, and is not accepted on presentment, it must be presented at the same place for payment, when presentment for payment is necessary.

§ 3212. A bill of exchange, accepted payable at a particular place, must be presented at that place for payment, when presentment for payment is necessary, and need not be presented elsewhere.

§ 3213. If a bill of exchange, payable at sight or on demand, without interest, is not duly presented for payment within ten days after the time in which it could, with reasonable diligence, be transmitted to the proper place for such presentment, the drawer and indorsers are exonerated, unless such presentment is excused.

§ 3214. Mere delay in presenting a bill of exchange payable with interest, at sight or on demand, does not exonerate any party thereto.

ARTICLE VII.

EXCUSE OF PRESENTMENT AND NOTICE.

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3219. Delay, when excused.

3220. Presentment and notice, when excused.

§ 3218. The presentment of a bill of exchange for acceptance is excused if the drawee has not capacity to accept it.

§ 3219. Delay in the presentment of a bill of exchange for acceptance is excused, when caused by circumstances over which the holder has no control.

§ 3220. Presentment of a bill of exchange for acceptance or payment, and notice of its dishonor, are excused as to the drawer, if he forbids the drawee to accept, or the acceptor to pay the bill; or if, at the time of drawing, he had no reason to believe that the drawee would accept or pay the same.

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3226. Protest, by whom made.

3227. Protest, how made.

3228. Protest, where made.

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3230. Protest, when excused.

3231. Notice of protest, how given.

3232. Waiver of protest.

3233. Declaration before payment for honor.

3234. Damages allowed on dishonor of foreign bill.

3235. Rate of damages.

3236. Interest on amount of protested bill.

3237. Damages, how estimated.

3238. Same.

§ 3224. An inland bill of exchange is one drawn and payable within this State. All others are foreign.

§ 3225. Notice of the dishonor of a foreign bill of exchange can be given only by notice of its protest.

§ 3226. Protest must be made by a notary public, if with reasonable diligence one can be obtained; and if not, then by any reputable person in the presence of two witnesses.

§ 3227. Protest must be made by an instrument in writing, giving a literal copy of the bill of exchange, with all that is written thereon, or annexing the original; stating the presentment, and the manner in which it was made; the presence or absence of the drawee or acceptor, as the case may be; the refusal to accept or to pay, or the inability of the drawee to give a binding acceptance; and in case of refusal, the reason assigned, if any; and, finally, protesting against all the parties to be charged.

§ 3228. A protest for non-acceptance must be made in the city or town in which the bill is presented for acceptance, and a protest for non-payment in the city or town in which it is presented for payment.

§ 3229. A protest must be noted on the day of presentment, or on the next business day; but it may be written out at any time thereafter.

§ 3230. The want of a protest of a foreign bill of exchange, or delay in making the same, is excused in like cases with the want or delay of presentment.

§ 3231. Notice of protest must be given in the same manner as notice of dishonor, except that it may be given by the notary who makes the protest.

§ 3232. If a foreign bill of exchange on its face waives protest, notice of dishonor may be given to any party thereto, in like manner as of an inland bill; except that if any indorser of such a bill expressly requires protest to be made, by a direction written on the bill at or before his indorsement, protest must be made, and notice thereof given to him and to all subsequent indorsers.

§ 3233. One who pays a foreign bill of exchange for honor must declare, before payment, in the presence of a person authorized to make protest, for whose honor he pays the same, in order to entitle him to reimbursement.

§ 3234. Damages are allowed as hereinafter prescribed, as a full compensation for interest accrued before notice of dishonor, reëxchange, expenses, and all other damages, in favor of holders for value only, upon bills of exchange drawn or negotiated within this State, and protested for non-acceptance or non-payment.

§ 3235. Damages are allowed under the last section upon bills drawn upon any person :

1. If drawn upon any person in this State, two dollars upon each one hundred dollars of the principal sum specified in the bill ;

2. If drawn upon any person out of this State, but in any of the other states west of the Rocky Mountains, five dollars upon each hundred dollars of the principal sum specified in the bill ;

3. If drawn upon any person in any of the United States east of the Rocky Mountains, ten dollars upon each hundred dollars of the principal sum specified in the bill ;

4. If drawn upon any person in any place in a foreign country, fifteen dollars upon each hundred dollars of the principal sum specified in the bill.

§ 3236. From the time of notice of dishonor and demand of payment, lawful interest must be allowed upon the aggregate amount of the principal sum specified in the bill, and the damages mentioned in the preceding section.

§ 3237. If the amount of a protested bill of exchange is expressed in money of the United States, damages are estimated upon such amount without regard to the rate of exchange.

§ 3238. If the amount of a protested bill of exchange is expressed in foreign money, damages are estimated upon the value of a similar bill at the time of protest, in the place nearest to the place where the bill was negotiated and where such bills are currently sold.

CHAPTER III.

PROMISSORY NOTES.

SECTION 3244. Promissory note, what.

3245. Certain instruments promissory notes.

3246. Bill of exchange, when converted into a note.

3247. Certain sections applicable to notes.

3248. Effect of delay in presentment.

§ 3244. A promissory note is an instrument, negotiable in form, whereby the signer promises to pay a specified sum of money.

§ 3245. An instrument in the form of a bill of exchange, but drawn upon and accepted by the drawer himself, is to be deemed a promissory note.

§ 3246. A bill of exchange, if accepted, with the consent of the owner, by a person other than the drawee, or an acceptor for honor, becomes in effect the promissory note of such person, and all prior parties thereto are exonerated.

§ 3247. Chapter I. of this title, and sections 3181 and 3214 of this Code, apply to promissory notes.

§ 3248. If a promissory note, payable on demand, or at sight, without interest, is not duly presented for payment within six months from its date, the indorsers thereof are exonerated, unless such presentment is excused.

CHAPTER IV.

CHECKS

SECTION 3254. Check, what

3255. Rules applicable to checks.

§ 3254. A check is a bill of exchange drawn upon a bank or banker, or a person described as such upon the face thereof, and payable on demand, without interest.

§ 3255. A check is subject to all the provisions of this Code concerning bills of exchange, except that :

1. The drawer and indorsers are exonerated by delay in presentment, only to the extent of the injury which they suffer thereby ;

2. An indorsee, after its apparent maturity, but without actual notice of its dishonor, acquires a title equal to that of an indorsee before such period.

CHAPTER V.

BONDS, BANK NOTES, AND CERTIFICATES OF DEPOSIT.

SECTION 3261. Bank note negotiable after payment.

3262. Title acquired by indorsee. (Repealed.)

§ 3261. A bank note remains negotiable, even after it has been paid by the maker.

§ 3262 of said Code is repealed. [In effect July 1, 1874.]

TITLE XVI.

GENERAL PROVISIONS.

SECTION 3268. Parties may waive provisions of Code.

§ 3268. Except where it is otherwise declared, the provisions of the foregoing fifteen titles of this part, in respect to the rights and obligations of parties to contracts, are subordinate to the intention of the parties, when ascertained in the manner prescribed by the Chapter on the Interpretation of Contracts ; and the benefit thereof may be waived by any party entitled thereto, unless such waiver would be against public policy

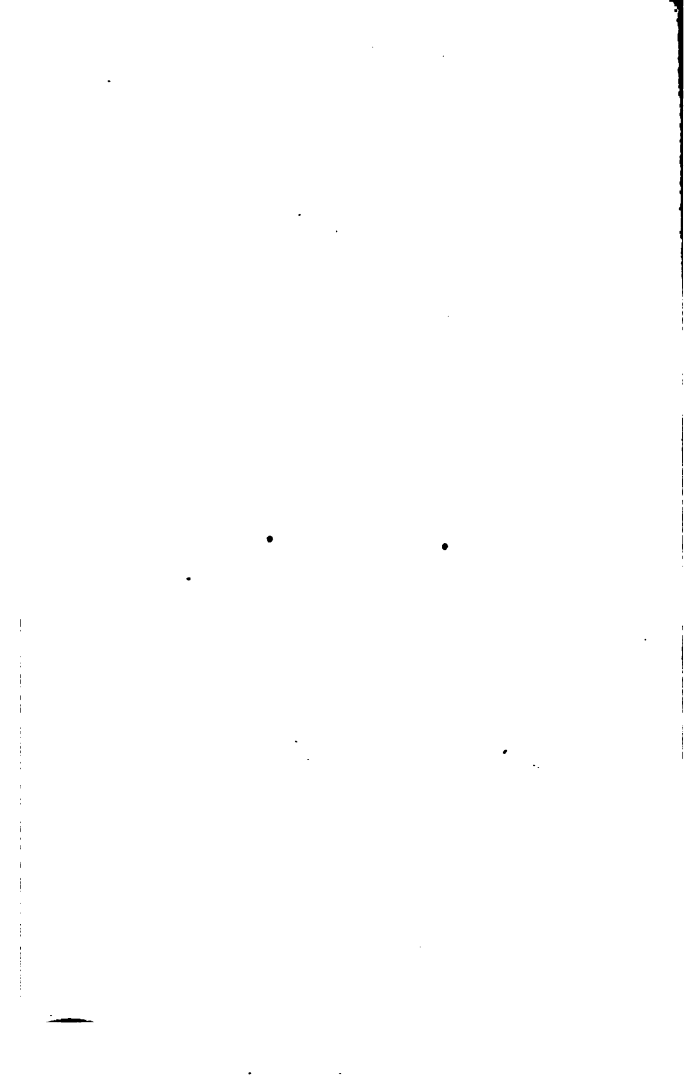
DIVISION FOURTH.

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**II. SPECIAL RELATIONS OF DEBTOR
AND CREDITOR, §§ 3429-3473.**

III. NUISANCE, §§ 3479-3503.

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PART I.

RELIEF.

TITLE I. RELIEF IN GENERAL, §§ 3274-3275.

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TITLE I.

RELIEF IN GENERAL.

SECTION 3274. Species of relief.

3275. Relief in case of forfeiture.

§ 3274. As a general rule, compensation is the relief or remedy provided by the law of this State for the violation of private rights, and the means of securing their observance; and specific and preventive relief may be given in no other cases than those specified in this part of the Civil Code.

§ 3275. Whenever, by the terms of an obligation, a party thereto incurs a forfeiture, or a loss in the nature of a forfeiture, by reason of his failure to comply with its provisions, he may be relieved therefrom, upon making full compensation to the other party, except in case of a grossly negligent, wilful, or fraudulent breach of duty.

TITLE II.

COMPENSATORY RELIEF.

CHAPTER I. DAMAGES IN GENERAL, §§ 3281-3294.

II. MEASURE OF DAMAGES, §§ 3300-3360.

CHAPTER I
DAMAGES IN GENERAL.

- ARTICLE I. GENERAL PRINCIPLES, §§ 3281-3283.**
II. INTEREST AS DAMAGES, §§ 3287-3290.
III. EXEMPLARY DAMAGES, § 3294.

ARTICLE I.

GENERAL PRINCIPLES.

- SECTION 3281.** Person suffering detriment may recover damages
3282. Detriment, what.
3283. Injuries resulting or probable after suit brought

§ 3281. Every person who suffers detriment from the unlawful act or omission of another may recover from the person in fault a compensation therefor in money, which is called damages.

§ 3282. Detriment is a loss or harm suffered in person or property.

§ 3283. Damages may be awarded, in a judicial proceeding, for detriment resulting after the commencement thereof, or certain to result in the future.

ARTICLE II.

INTEREST AS DAMAGES.

- SECTION 3287.** Person entitled to recover damages may recover interest thereon.
3288. In actions other than contract.
3289. Limit of rate by contract.
3290. Acceptance of principal waives claim to interest.

§ 3287. Every person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in him upon a particular day, is entitled also to recover interest thereon from that day, except during such time as the debtor is prevented by law, or by the act of the creditor, from paying the debt.

§ 3288. In an action for the breach of an obligation not arising from contract, and in every case of oppression, fraud, or malice, interest may be given, in the discretion of the jury.

§ 3289. Any legal rate of interest stipulated by a contract remains chargeable after a breach thereof, as before, until the contract is superseded by a verdict or other new obligation.

§ 3290. Accepting payment of the whole principal, as such, waives all claim to interest.

ARTICLE III.

EXEMPLARY DAMAGES.

SECTION 3294. Exemplary damages, in what cases allowed.

§ 3294. In any action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud, or malice, actual or presumed, the jury, in addition to the actual damages, may give damages for the sake of example, and by way of punishing the defendant.

CHAPTER II.

MEASURE OF DAMAGES.

ARTICLE I. DAMAGES FOR BREACH OF CONTRACT, §§ 3300-3319.

II. DAMAGES FOR WRONGS, §§ 3323-3340.

III. PENAL DAMAGES, §§ 3341-3348.

IV. GENERAL PROVISIONS, §§ 3353-3360.

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3301. Damages must be certain.

3302. Breach of contract to pay liquidated sum

3303. Dishonor of foreign bills of exchange.

3304. Detriment caused by breach of covenant of seisin, &c. —
what is.

SECTION 3305. Detriment caused by breach of covenant against incumbrances, is what.

3306. Breach of agreement to convey real property.

3307. Breach of agreement to buy real property.

3308. Breach of agreement to sell personal property not paid for.

3309. Breach of agreement to sell personal property paid for.

3310. Breach of agreement to pay for personal property sold.

3311. Breach of agreement to buy personal property.

3312. Breach of warranty of title to personal property.

3313. Breach of warranty of quality of personal property.

3314. Breach of warranty of quality for special purpose.

3315. Breach of carrier's obligation to receive goods, &c.

3316. Breach of carrier's obligation to deliver.

3317. Carrier's delay.

3318. Breach of warranty of authority.

3319. Breach of promise of marriage.

§ 3300. For the breach of an obligation arising from contract, the measure of damages, except where otherwise expressly provided by this Code, is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby, or which in the ordinary course of things would be likely to result therefrom. [In effect July 1, 1874.]

§ 3301. No damages can be recovered for a breach of contract which are not clearly ascertainable in both their nature and origin.

§ 3302. The detriment caused by the breach of an obligation to pay money only, is deemed to be the amount due by the terms of the obligation, with interest thereon.

§ 3303. For the dishonor of foreign bills of exchange the damages are prescribed by sections 3235, 3237, and 3238.

§ 3304. The detriment caused by the breach of a covenant of "seizin," of "right to convey," of "warranty," or of "quiet enjoyment," in a grant of an estate in real property, is deemed to be :

1. The price paid to the grantor ; or, if the breach is partial only, such proportion of the price as the value of the property affected by the breach bore at the time of the grant to the value of the whole property ;

2. Interest thereon for the time during which the grantee derived no benefit from the property, not exceeding five years ;

3. Any expenses properly incurred by the covenantee in defending his possession.

§ 3305. The detriment caused by the breach of a covenant against incumbrances, in a grant of an estate in real property, is deemed to be the amount which has been actually expended by the covenantee in extinguishing either the principal or interest thereof, not exceeding in the former case a proportion of the price paid to the grantor equivalent to the relative value at the time of the grant of the property affected by the breach, as compared with the whole, or, in the latter case, interest on a like amount.

§ 3306. The detriment caused by the breach of an agreement to convey an estate in real property is deemed to be the price paid, and the expenses properly incurred in examining the title and preparing the necessary papers, with interest thereon; but adding thereto, in case of bad faith, the difference between the price agreed to be paid and the value of the estate agreed to be conveyed, at the time of the breach, and the expenses properly incurred in preparing to enter upon the land.

55 Cal. 41.

§ 3307. The detriment caused by the breach of an agreement to purchase an estate in real property is deemed to be the excess, if any, of the amount which would have been due to the seller, under the contract, over the value of the property to him.

§ 3308. The detriment caused by the breach of a seller's agreement to deliver personal property, the price of which has not been fully paid in advance, is deemed to be the excess, if any, of the value of the property to the buyer, over the amount which would have been due to the seller under the contract, if it had been fulfilled.

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§ 3309. The detriment caused by the breach of a seller's agreement to deliver personal property, the price of which has been fully paid to him in advance, is deemed to be the same as in case of wrongful conversion.

§ 3310. The detriment caused by the breach of a buyer's agreement to accept and pay for personal property, the title to which is vested in him, is deemed to be the contract price

§ 3311. The detriment caused by the breach of a buyer's agreement to accept and pay for personal property, the title to which is not vested in him, is deemed to be :

1. If the property has been resold, pursuant to section 3049, the excess, if any, of the amount due from the buyer, under the contract, over the net proceeds of the resale ; or,

2. If the property has not been resold in the manner prescribed by section 3049, the excess, if any, of the amount due from the buyer, under the contract, over the value to the seller, together with the excess, if any, of the expenses properly incurred in carrying the property to market, over those which would have been incurred for the carriage thereof, if the buyer had accepted it.

§ 3312. The detriment caused by the breach of a warranty of the title of personal property sold is deemed to be the value thereof to the buyer, when he is deprived of its possession, together with any costs which he has become liable to pay in an action brought for the property by the true owner.

§ 3313. The detriment caused by the breach of a warranty of the quality of personal property is deemed to be the excess, if any, of the value which the property would have had at the time to which the warranty referred, if it had been complied with, over its actual value at that time.

§ 3314. The detriment caused by the breach of a warranty of the fitness of an article of personal property for a particular purpose is deemed to be that which is defined by the last section, together with a fair compensation for the loss incurred by an effort in good faith to use it for such purpose.

§ 3315. The detriment caused by the breach of a carrier's obligation to accept freight, messages, or passengers is deemed to be the difference between the amount which he had a right to charge for the carriage and the amount which it would be necessary to pay for the same service when it ought to be performed.

§ 3316. The detriment caused by the breach of a carrier's obligation to deliver freight, where he has not converted it to his own use, is deemed to be the value thereof at the place and on the day at which it should have been delivered, deducting the freightage to which he would have been entitled if he had completed the delivery.

§ 3317. The detriment caused by a carrier's delay in the delivery of freight is deemed to be the depreciation in the intrinsic value of the freight during the delay, and also the depreciation, if any, in the market value thereof, otherwise than by reason of a depreciation in its intrinsic value, at the place where it ought to have been delivered, and between the day at which it ought to have been delivered and the day of its actual delivery.

§ 3318. The detriment caused by the breach of a warranty of an agent's authority is deemed to be the amount which could have been recovered and collected from his principal if the warranty had been complied with, and the reasonable expenses of legal proceedings taken, in good faith, to enforce the act of the agent against his principal.

§ 3319. The damages for the breach of a promise of marriage rest in the sound discretion of the jury.

ARTICLE II.

DAMAGES FOR WRONGS.

SECTION 3333. Breach of obligation other than contract.

3334. Wrongful occupation of real property

3335. Wilful holding over.

3336. Conversion of personal property.

3337. Same.

3338. Damages of lienor.

3339. Seduction.

3340. Injuries to animals

§ 3333. For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by this Code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.

53 Cal. 58 ; 56 Cal. 132, 218 ; 58 Cal. 242, 357.

§ 3334. The detriment caused by the wrongful occupation of real property, in cases not embraced in sections 3335, 3344, and 3345 of this Code, or section 1174 of the Code of Civil Procedure, is deemed to be the value of the use of the property for the time of such occupation, not exceeding five years next preceding the commencement of the action or proceeding to enforce the right to damages, and the costs, if any, of recovering the possession.

§ 3335. For wilfully holding over real property, by a person who entered upon the same, as guardian or trustee for an infant, or by right of an estate terminable with any life or lives, after the termination of the trust or particular estate, without the consent of the party immediately entitled after such termination, the measure of damages is the value of the profits received during such holding over.

§ 3336. The detriment caused by the wrongful conversion of personal property is presumed to be :

1. The value of the property at the time of the conversion, with the interest from that time ; or, where the action has been prosecuted with reasonable diligence, the highest market value of the property at any time between the conversion and the verdict, without interest, at the option of the injured party ; and,

2. A fair compensation for the time and money properly expended in pursuit of the property. [In effect January 22, 1878.]

50 Cal. 115 ; 53 Cal. 278 ; 54 Cal. 194 ; 57 Cal. 326 ; 58 Cal. 242.

§ 3337. The presumption declared by the last section can not be repelled, in favor of one whose possession was wrongful from the beginning, by his subsequent application of the property to the benefit of the owner, without his consent.

§ 3338. One having a mere lien on personal property cannot recover greater damages for its conversion, from one having a right thereto superior to his, after his lien is discharged, than the amount secured by the lien, and the compensation allowed by section 3336 for loss of time and expenses.

§ 3339. The damages for seduction rest in the sound discretion of the jury.

§ 3340. For wrongful injuries to animals being subjects of property, committed wilfully or by gross negligence, in disregard of humanity, exemplary damages may be given.

Dogs are Property, Penal Code, § 491 ; Injury to, Penal Code, § 597.

§ 3341. The owner, possessor, or harbinger of any dog or other animal that shall kill, worry, or wound any sheep, Angora or Cashmere goats, shall be liable to the owner of the same for the damages and costs of suit, to be recovered before any court of competent jurisdiction.

1. In the prosecution of actions under the provisions of this chapter, it shall not be necessary for the plaintiff to show that the owner, possessor, or harbinger of such dog or other animal had knowledge of the fact that such dog or other animal would kill or wound such sheep or goats.

2. Any person on finding any dog or dogs not on the premises of its owner or possessor worrying, wounding, or killing any sheep, Angora or Cashmere goats, may, at the time of so finding said dog or dogs, kill the same, and the owner or owners thereof shall sustain no action for damages against any person so killing such dog or dogs. [Approved March 13, 1883.]

ARTICLE III.

PENAL DAMAGES.

SECTION 3344. Failure to quit, after notice.

3345. Tenant wilfully holding over.

3346. Injuries to trees, &c.

3347. Injuries inflicted in a duel.

3348. Same.

§ 3344. If any tenant give notice of his intention to quit the premises, and does not deliver up the possession at the time specified in the notice, he must pay to the landlord treble rent during the time he continues in possession after such notice.

Code Civ. Proc. § 1162.

§ 3345. If any tenant, or any person in collusion with the tenant, holds over any lands or tenements after demand made and one month's notice, in writing given, requiring the possession thereof, such person holding over must pay to the landlord treble rent during the time he continues in possession after such notice.

Code Civ. Proc. §§ 1162, 1174.

§ 3346. For wrongful injuries to timber, trees, or under-wood upon the land of another, or removal thereof, the measure of damages is three times such a sum as would compensate for the actual detriment, except where the trespass was casual and involuntary, or committed under the belief that the land belonged to the trespasser, or where the wood was taken by the authority of highway officers for the purposes of a highway; in which cases the damages are a sum equal to the actual detriment.

§ 3347. If any person slays or permanently disables another person in a duel in this State, the slayer must provide

for the maintenance of the widow or wife of the person slain or permanently disabled, and for the minor children, in such manner and at such cost, either by aggregate compensation in damages to each, or by a monthly, quarterly, or annual allowance, to be determined by the court.

Duels and Challenges. See Penal Code, §§ 225-232.

§ 3348. If any person slays or permanently disables another person in a duel in this State, the slayer is liable for and must pay all debts of the person slain or permanently disabled.

ARTICLE IV.

GENERAL PROVISIONS.

SECTION 3353. Value, how estimated in favor of seller.

3354. Value, how estimated in favor of buyer.

3355. Property of peculiar value.

3356. Value of thing in action.

3357. Damages allowed in this chapter, exclusive of others.

3358. Limitation of damages.

3359. Damages to be reasonable.

3360. Nominal damages.

§ 3353. In estimating damages, the value of property to a seller thereof is deemed to be the price which he could have obtained therefor in the market nearest to the place at which it should have been accepted by the buyer, and at such time after the breach of the contract as would have sufficed, with reasonable diligence, for the seller to effect a resale.

§ 3354. In estimating damages, except as provided by sections 3355 and 3356, the value of property, to a buyer or owner thereof, deprived of its possession, is deemed to be the price at which he might have bought an equivalent thing in the market nearest to the place where the property ought to have been put into his possession, and at such time after the breach of duty upon which his right to damages is founded as would suffice, with reasonable diligence, for him to make such a purchase.

7 W C R 532

§ 3355. Where certain property has a peculiar value to a person recovering damages for deprivation thereof, or injury thereto, that may be deemed to be its value against one who had notice thereof before incurring a liability to damages in respect thereof, or against a wilful wrongdoer.

§ 3356. For the purpose of estimating damages, the value of an instrument in writing is presumed to be equal to that

of the property to which it entitles its owner. [In effect July 1, 1874.]

§ 3357. The damages prescribed by this chapter are exclusive of exemplary damages and interest, except where those are expressly mentioned.

§ 3358. Notwithstanding the provisions of this chapter, no person can recover a greater amount in damages for the breach of an obligation than he could have gained by the full performance thereof on both sides, except in the cases specified in the articles on Exemplary Damages and Penal Damages, and in sections 3319, 3339, and 3340.

§ 3359. Damages must, in all cases, be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages, contrary to substantial justice, no more than reasonable damages can be recovered.

§ 3360. When a breach of duty has caused no appreciable detriment to the party affected, he may yet recover nominal damages.

57 Cal. 137.

TITLE III.

SPECIFIC AND PREVENTIVE RELIEF.

CHAPTER I. GENERAL PRINCIPLES, §§ 3366-3369.

II. SPECIFIC RELIEF, §§ 3375-3414.

III. PREVENTIVE RELIEF, §§ 3420-3423.

CHAPTER I.

GENERAL PRINCIPLES.

SECTION 3366. Specific relief, &c., when allowed.

3367. Specific relief, how given.

3368. Preventive relief, how given.

3369. Not to enforce penalty, &c.

§ 3366. Specific or preventive relief may be given in the cases specified in this title, and in no others.

§ 3367. Specific relief is given :

1. By taking possession of a thing, and delivering it to a claimant ;
2. By compelling a party himself to do that which ought to be done ; or,
3. By declaring and determining the rights of parties, otherwise than by an award of damages.

Code Civ. Proc. §§ 726-827, 1067-1110, 667.

§ 3368. Preventive relief is given by prohibiting a party from doing that which ought not to be done.

Code Civ. Proc. §§ 525-533, 1072, 1102-1105, 1209-1222.

§ 3369. Neither specific nor preventive relief can be granted to enforce a penal law, except in a case of nuisance, nor to enforce a penalty or forfeiture in any case.

CHAPTER II.

SPECIFIC RELIEF.

ARTICLE I. POSSESSION OF REAL PROPERTY, § 3375.

II. POSSESSION OF PERSONAL PROPERTY, §§ 3379-3380.

III. SPECIFIC PERFORMANCE OF OBLIGATIONS, §§ 3384-3395.

IV. REVISION OF CONTRACTS, §§ 3399-3402.

V. RESCISSION OF CONTRACTS, §§ 3406-3408.

VI. CANCELLATION OF INSTRUMENTS, §§ 3412-3414.

ARTICLE I.

POSSESSION OF REAL PROPERTY.

SECTION 3375. Judgment for possession or title.

§ 3375. A person entitled to specific real property, by reason either of a perfected title or of a claim to title which ought to be perfected, may recover the same in the manner prescribed by the Code of Civil Procedure, either by a judgment for its possession, to be executed by the sheriff, or by a judgment requiring the other party to perfect the title and to deliver possession of the property.

Code Civ. Proc. §§ 738-748.

ARTICLE II.

POSSESSION OF PERSONAL PROPERTY.

SECTION 3379. Judgment for delivery

3380. When holder may be compelled to deliver.

§ 3379. A person entitled to the immediate possession of specific personal property may recover the same in the manner provided by the Code of Civil Procedure.

Claim and Delivery Code Civ Proc. §§ 509-520.

§ 3380. Any person having the possession or control of a particular article of personal property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession. [In effect July 1, 1874.]

ARTICLE III.

SPECIFIC PERFORMANCE OF OBLIGATIONS.

SECTION 3384. In what cases compelled.

3385. Remedy mutual. (Repealed.)

3386. No remedy unless mutual.

3387. Distinction between real and personal property.

3388. Contract signed by one party only may be enforced by other.

3389. Liquidation of damages not a bar to specific performance.

3390. What cannot be specifically enforced.

3391. What parties cannot be compelled to perform.

3392. What parties cannot have specific performance in their favor

3393. Specific performance not required when oppressive. (Repealed.)

3394. Agreement to sell property by one who has no title.

3395. Relief against parties claiming under person bound to perform.

§ 3384. Except as otherwise provided in this article, the specific performance of an obligation may be compelled. [In effect July 1, 1874.]

56 Cal. 539.

§ 3385 of said Code is repealed. [In effect July 1, 1874.]

§ 3386. Neither party to an obligation can be compelled specifically to perform it, unless the other party thereto has performed, or is compellable specifically to perform, every-

thing to which the former is entitled under the same obligation, either completely or nearly so, together with full compensation for any want of entire performance.

§ 3387. It is to be presumed that the breach of an agreement to transfer real property cannot be adequately relieved by pecuniary compensation, and that the breach of an agreement to transfer personal property can be thus relieved.

§ 3388. A party who has signed a written contract may be compelled specifically to perform it, though the other party has not signed it, if the latter has performed, or offers to perform it on his part, and the case is otherwise proper for enforcing specific performance.

§ 3389. A contract otherwise proper to be specifically enforced may be thus enforced, though a penalty is imposed, or the damages are liquidated for its breach, and the party in default is willing to pay the same.

§ 3390. The following obligations cannot be specifically enforced :

1. An obligation to render personal service ;
2. An obligation to employ another in personal service ;
3. An agreement to submit a controversy to arbitration ;
4. An agreement to perform an act which the party has not power lawfully to perform when required to do so ;
5. An agreement to procure the act or consent of the wife of the contracting party, or of any other third person ; or,
6. An agreement, the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable.

56 Cal. 312, 539.

§ 3391. Specific performance cannot be enforced against a party to a contract in any of the following cases :

1. If he has not received an adequate consideration for the contract ;
2. If it is not, as to him, just and reasonable ;
3. If his assent was obtained by the misrepresentation, concealment, circumvention, or unfair practices of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled ; or ;
4. If his assent was given under the influence of mistake

misapprehension, or surprise, except that where the contract provides for compensation in case of mistake, a mistake within the scope of such provision may be compensated for, and the contract specifically enforced in other respects, if proper to be so enforced.

§ 3392. Specific performance cannot be enforced in favor of a party who has not fully and fairly performed all the conditions precedent on his part to the obligation of the other party, except where his failure to perform is only partial, and either entirely immaterial or capable of being fully compensated, in which case specific performance may be compelled, upon full compensation being made for the default.

58 Cal. 364, 442.

§ 3393 of said Code is repealed. [In effect July 1, 1874.]

§ 3394. An agreement for the sale of property cannot be specifically enforced in favor of a seller who cannot give to the buyer a title free from reasonable doubt.

§ 3395. Whenever an obligation in respect to real property would be specifically enforced against a particular person, it may be in like manner enforced against any other person claiming under him by a title created subsequently to the obligation, except a purchaser or incumbrancer in good faith and for value, and except, also, that any such person may exonerate himself by conveying all his estate to the person entitled to enforce the obligation.

ARTICLE IV.

REVISION OF CONTRACTS.

SECTION 3399. When contract may be revised.

3400. Presumption as to intent of parties.

3401. Principles of revision.

3402. Enforcement of revised contract.

§ 3399. When, through fraud or a mutual mistake of the parties, or a mistake of one party, which the other at the time knew or suspected, a written contract does not truly express the intention of the parties, it may be revised on the application of a party aggrieved, so as to express that intention, so far as it can be done without prejudice to rights acquired by third persons, in good faith and for value.

57 Cal. 399; 58 Cal. 8.

§ 3400. For the purpose of revising a contract, it must be presumed that all the parties thereto intended to make an equitable and conscientious agreement.

§ 3401. In revising a written instrument, the court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the inquiry what the language of the instrument was intended to be.

§ 3402. A contract may be first revised and then specifically enforced.

ARTICLE V.

RESCISSION OF CONTRACTS.

SECTION 3406. When rescission may be adjudged.

3407. Rescission for mistake.

3408. Court may require party rescinding to do equity.

§ 3406. The rescission of a written contract may be adjudged, on the application of a party aggrieved:

1. In any of the cases mentioned in section 1689; or,
2. Where the contract is unlawful, for causes not apparent upon its face, and the parties were not equally in fault; or,
3. When the public interest will be prejudiced by permitting it to stand.

§ 3407. Rescission cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

§ 3408. On adjudging the rescission of a contract, the court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

ARTICLE VI.

CANCELLATION OF INSTRUMENTS.

SECTION 3412 When cancellation may be ordered.

3413. Instrument obviously void.

3414. Cancellation in part.

§ 3412. A written instrument, in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable, may, upon his application, be so adjudged, and ordered to be delivered up or cancelled.

§ 3413. An instrument, the invalidity of which is apparent upon its face, or upon the face of another instrument which is necessary to the use of the former in evidence, is not to be deemed capable of causing injury, within the provisions of the last section.

§ 3414. Where an instrument is evidence of different rights or obligations, it may be cancelled in part, and allowed to stand for the residue.

CHAPTER III.

PREVENTIVE RELIEF.

SECTION 3420. Preventive relief, how granted.

3421. Provisional injunctions.

3422. Injunction, when allowed.

3423. Injunction, when not allowed.

§ 3420. Preventive relief is granted by injunction, provisional or final.

§ 3421. Provisional injunctions are regulated by the Code of Civil Procedure. [§§ 525-533.]

§ 3422. Except where otherwise provided by this title, a final injunction may be granted to prevent the breach of an obligation existing in favor of the applicant:

1. Where pecuniary compensation would not afford adequate relief;
 2. Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief;
 3. Where the restraint is necessary to prevent a multiplicity of judicial proceedings; or,
 4. Where the obligation arises from a trust.
-

§ 3432. A debtor may pay one creditor in preference to another, or may give to one creditor security for the payment of his demand in preference to another.

§ 3433. Where a creditor is entitled to resort to each of several funds for the satisfaction of his claim, and another person has an interest in, or is entitled as a creditor to resort to some, but not all of them, the latter may require the former to seek satisfaction from those funds to which the latter has no such claim, so far as it can be done without impairing the right of the former to complete satisfaction, and without doing injustice to third persons.

TITLE II.

FRAUDULENT INSTRUMENTS AND TRANSFERS.

SECTION 3439. Transfers, &c., with intent to defraud creditors.

3440. Certain transfers presumed fraudulent.

3441. Creditor's right must be judicially ascertained.

3442. Question of fraud, how determined.

§ 3439. Every transfer of property or charge thereon made, every obligation incurred, and every judicial proceeding taken, with intent to delay or defraud any creditor or other person of his demands, is void against all creditors of the debtor, and their successors in interest, and against any person upon whom the estate of the debtor devolves in trust for the benefit of others than the debtor.

Code Civ. Proc. § 479; Penal Code, §§ 154, 581.

§ 3440. Every transfer of personal property, other than a thing in action, or a ship or cargo at sea, or in a foreign port, and every lien thereon, other than a mortgage, when allowed by law, and a contract of bottomry or respondentia, is conclusively presumed, if made by a person having at the time the possession or control of the property, and not accompanied by an immediate delivery, and followed by an actual and continued change of possession of the things transferred, to be fraudulent, and therefore void, against those who are his creditors while he remains in possession, and the suc

cessors in interest of such creditors, and against any persons on whom his estate devolves in trust for the benefit of others than himself, and against purchasers or incumbrancers in good faith subsequent to the transfer.

53 Cal. 402, 625. 35-255-284

§ 3441. A creditor can avoid the act or obligation of his debtor for fraud only where the fraud obstructs the enforcement, by legal process, of his right to take the property affected by the transfer or obligation.

§ 3442. In all cases arising under section 1227, or under the provisions of this title, except as otherwise provided in section 3440, the question of fraudulent intent is one of fact, and not of law; nor can any transfer or charge be adjudged fraudulent solely on the ground that it was not made for a valuable consideration.

54 Cal. 629.

TITLE III.

ASSIGNMENTS FOR THE BENEFIT OF CREDITORS.

SECTION 3449. When debtor may execute assignment.

3450. Insolvency, what.

3451. Certain transfers not affected.

3452. What debts may be secured.

3453. What preferences may be given. (Repealed.)

3454. Preference must be absolute. (Repealed.)

3455. Certain rights not affected by preferences in assignment. (Repealed.)

3456. Joint and separate debts. (Repealed.)

3457. Assignment, when void.

3458. The instrument of assignment.

3459. Compliance with provisions of last section necessary to validity of assignment.

3460. Assignee takes, subject to rights of third parties

3461. Inventory required.

3462. Verification of inventory.

3463. Recording assignment and filing inventory

3464. Same.

3465. Effect of omitting to record.

3466. Assignment of real property.

3467. Bond of assignees.

3468. Conditions of disposal and conversion.

3469. Accountings.

3470. Property exempt.

SECTION 3471. Compensation.

3472. Assignees protected for acts done in good faith.

3473. Assent of creditor necessary to modification of assignment

§ 3449. An insolvent debtor may, in good faith, execute an assignment of property to one or more assignees, in trust for the satisfaction of his creditors, in conformity to the provisions of this chapter; subject, however, to the provisions of this Code relative to trusts and to fraudulent transfers, and to the restrictions imposed by law upon assignments by special partnerships, by corporations, or by other specific classes or persons.

Penal Code, § 154.

§ 3450. A debtor is insolvent, within the meaning of this title, when he is unable to pay his debts from his own means, as they become due.

§ 3451. The provisions of this title do not prevent a person residing in another State or country from making there, in good faith and without intent to evade the laws of this State, a transfer of property situated within it; nor do they affect the power of a person, although insolvent and within this State, to transfer property to a particular creditor for the purpose of paying or securing the whole or a part of a debt owing to such creditor, whether in his own right or otherwise.

§ 3452. An assignment for the benefit of creditors may provide for any subsisting liability of the assignor which he might lawfully pay, whether absolute or contingent.

§ 3453 of said Code is repealed. [In effect July 1, 1874.]

§ 3454 of said Code is repealed. [In effect July 1, 1874.]

§ 3455 of said Code is repealed. [In effect July 1, 1874.]

§ 3456 of said Code is repealed. [In effect July 1, 1874.]

§ 3457. An assignment for the benefit of creditors is void against any creditor of the assignor not assenting thereto, in the following cases:

1. If it give a preference of one debt or class of debts over another;

2. If it tend to coerce any creditor to release or compromise his demand ;

3. If it provide for the payment of any claim known to the assignor to be false or fraudulent, or for the payment of more upon any claim than is known to be justly due from the assignor ;

4. If it reserve any interest in the assigned property, or in any part thereof, to the assignor, or for his benefit, before all his existing debts are paid ;

5. If it confer upon the assignee any power which, if exercised, might prevent or delay the immediate conversion of the assigned property to the purposes of the trust ;

6. If it exempt him from liability for neglect of duty or misconduct. [In effect July 1, 1874.]

§ 3458. An assignment for the benefit of creditors must be in writing, subscribed by the assignor, or by his agent thereto authorized by writing. It must be acknowledged, or proved and certified, in the mode prescribed by the chapter on Recording Transfers of Real Property, and recorded as required by sections 3463 and 3464 ; but recording in one county constitutes a compliance with the following section.

§ 3459. Unless the provisions of the last section are complied with, an assignment for the benefit of creditors is void against every creditor of the assignor not assenting thereto.

§ 3460. An assignee for the benefit of creditors is not to be regarded as a purchaser for value, and has no greater rights than his assignor had, in respect to things in action transferred by the assignment.

§ 3461. Within twenty days after an assignment is made for the benefit of creditors, the assignor must make and file, in the manner prescribed by section 3463, a full and true inventory, showing :

1. All the creditors of the assignor ;

2. The place of residence of each creditor, if known to the assignor ; or if not known, that fact must be stated ;

3. The sum owing to each creditor and the nature of each debt or liability, whether arising on written security, account, or otherwise ;

4. The true consideration of the liability in each case, and the place where it arose ;

5. Every existing judgment, mortgage, or other security for the payment of any debt or liability of the assignor ;

6. All property of the assignor at the date of the assignment, which is exempt by law from execution ; and,

7. All of the assignor's property at the date of the assignment, both real and personal, of every kind, not so exempt, and the incumbrances existing thereon, and all vouchers and securities relating thereto, and the value of such property according to the best knowledge of the assignor.

§ 3462. An affidavit must be made by every person executing an assignment for the benefit of creditors, to be annexed to and filed with the inventory mentioned in the last section, to the effect that the same is in all respects just and true, according to the best of such assignor's knowledge and belief.

§ 3463. An assignment for the benefit of creditors must be recorded, and the inventory required by section 3461 filed with the county recorder of the county in which the assignor resided at the date of the assignment ; or, if he did not then reside in this State, with the recorder of the county in which his principal place of business was then situated ; or, if he had not then a residence or place of business in this State, with the recorder of the county in which the principal part of the assigned property was then situated.

§ 3464. If an assignment for the benefit of creditors is executed by more than one assignor, it may be recorded, and a copy of the inventory, required by section 3461, may be filed with the recorder of the county in which any of the assignors resided at its date, or in which any of them, not then residing in this State, had then a place of business.

§ 3465. An assignment for the benefit of creditors is void against creditors of the assignor, and against purchasers and incumbrancers in good faith and for value, unless it is recorded, and unless the inventory required by section 3461 is filed, pursuant to section 3463, within twenty days after the date of the assignment. [In effect February 25, 1878.]

§ 3466. Where an assignment for the benefit of creditors embraces real property, it is subject to the provisions of Article IV. of the Chapter on Recording Transfers, as well as to those of this title. [§§ 1158-1217.]

§ 3467. Within thirty days after the date of an assignment for the benefit of creditors, the assignee must enter into a bond to the people of this State, in such amount as may be fixed by a judge of the Superior Court of the county in which the original inventory is filed, with sufficient sureties, to be approved by such judge, and conditioned for the faithful discharge of the trust, and the due accounting for all moneys received by the assignee, which bond must be filed in the same office with the original inventory. [In effect February 15, 1883.]

§ 3468. Until the inventory and affidavit required by sections 3461 and 3462 have been made and filed, and the assignee has given a bond as required by the last section, the assignee for the benefit of creditors has no authority to dispose of the estate or convert it to the purposes of the trust.

§ 3469. After six months from the date of an assignment for the benefit of creditors, the assignee may be required, on the petition of any creditor, to account before the Superior Court of the county where the accompanying inventory was filed, in the manner prescribed by the insolvent laws of this State. [In effect February 15, 1883.]

Pol. Code, § 19, subd. 24, continues in force. Act of May 4, 1862.

§ 3470. Property exempt from execution, and insurance upon the life of the assignor, do not pass to the assignee by a general assignment for the benefit of creditors, unless the instrument specially mentions them, and declares an intention that they should pass thereby.

§ 3471. In the absence of any provision in the assignment to the contrary, an assignee for the benefit of creditors is entitled to the same commissions as are allowed by law to executors and guardians; but the assignment cannot grant more, and may restrict the commissions to a less amount, or deny them altogether.

56 Cal. 628.

§ 3472. An assignee for the benefit of creditors is not to be held liable for his acts, done in good faith, in the execution of the trust, merely for the reason that the assignment is afterward adjudged void.

§ 3473. An assignment for the benefit of creditors, which

has been executed and recorded so as to transfer the property to the assignee, cannot afterwards be canceled or modified by the parties thereto, without the consent of every creditor affected thereby.

Statutes in relation to proceedings in insolvency continued in *force*
Code Civ. Proc. § 1822.

PART III.

NUISANCE.

TITLE I. GENERAL PRINCIPLES, §§ 3479-3484.

II. PUBLIC NUISANCES, §§ 3490-3495.

III. PRIVATE NUISANCES, §§ 3501-3503.

TITLE I.

GENERAL PRINCIPLES.

SECTION 3479. Nuisance, what.

3480. Public nuisance.

3481. Private nuisance.

3482. What is not deemed a nuisance.

3483. Successive owners.

3484. Abatement does not preclude action.

§ 3479. Anything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance. [In effect July 1, 1874.]

Code Civ. Proc. § 731; Penal Code, §§ 370-371.

§ 3480. A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal. [In effect July 1, 1874.]

§ 3481. Every nuisance not included in the definition of the last section is private.

§ 3482. Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance.

§ 3483. Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of, such property, created by a former owner, is liable therefor in the same manner as the one who first created it.

Code Civ. Proc. § 731.

§ 3484. The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence.

Nuisance Penal Code, §§ 870-874

TITLE II.

PUBLIC NUISANCES.

SECTION 3490. Lapse of time does not legalize.

3491. Abatement.

3492. When notice is required.

3493. Remedies for public nuisance.

3494. Action.

3495. How abated.

§ 3490. No lapse of time can legalize a public nuisance, amounting to an actual obstruction of public right.

§ 3491. The remedies against a public nuisance are :

1. Indictment or information ;
2. A civil action ; or,
3. Abatement. [In effect March 2, 1880.]

§ 3492. The remedy by indictment or information is regulated by the Penal Code.

Penal Code, §§ 870-874.

§ 3493. A private person may maintain an action for a public nuisance, if it is specially injurious to himself, but not otherwise.

54 Cal. 533.

§ 3494. A public nuisance may be abated by any public body or officer authorized thereto by law.

§ 3495. Any person may abate a public nuisance which is specially injurious to him by removing, or, if necessary, destroying the thing which constitutes the same, without committing a breach of the peace, or doing unnecessary injury.

TITLE III.

PRIVATE NUISANCES.

SECTION 3501. Remedies for private nuisance

3502. Abatement, when allowed.

3503. When notice is required.

§ 3501. The remedies against a private nuisance are :

1. A civil action ; or,
2. Abatement.

§ 3502. A person injured by a private nuisance may abate it by removing, or, if necessary, destroying the thing which constitutes the nuisance, without committing a breach of the peace, or doing unnecessary injury.

§ 3503. Where a private nuisance results from a mere omission of the wrongdoer, and cannot be abated without entering upon his land, reasonable notice must be given to him before entering to abate it.

PART IV.

MAXIMS OF JURISPRUDENCE.

§ 3509. THE maxims of jurisprudence hereinafter set forth are intended not to qualify any of the foregoing provisions of this Code, but to aid in their just application.

§ 3510. When the reason of a rule ceases, so should the rule itself.

§ 3511. Where the reason is the same, the rule should be the same.

§ 3512. One must not change his purpose to the injury of another.

§ 3513. Any one may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement.

58 Cal. 98.

§ 3514. One must so use his own rights as not to infringe upon the rights of another.

§ 3515. He who consents to an act is not wronged by it.

§ 3516. Acquiescence in error takes away the right of objecting to it.

§ 3517. No one can take advantage of his own wrong.

§ 3518. He who has fraudulently dispossessed himself of a thing may be treated as if he still had possession.

§ 3519. He who can and does not forbid that which is done on his behalf is deemed to have bidden it.

§ 3520. No one should suffer by the act of another.

§ 3521. He who takes the benefit must bear the burden.

§ 3522. One who grants a thing is presumed to grant also whatever is essential to its use.

§ 3523. For every wrong there is a remedy.

§ 3524. Between those who are equally in the right, or equally in the wrong, the law does not interpose.

§ 3525. Between rights otherwise equal, the earliest is preferred.

§ 3526. No man is responsible for that which no man can control.

§ 3527. The law helps the vigilant, before those who sleep on their rights.

§ 3528. The law respects form less than substance.

58 Cal. 98.

§ 3529. That which ought to have been done is to be regarded as done, in favor of him to whom, and against him from whom, performance is due.

§ 3530. That which does not appear to exist is to be regarded as if it did not exist.

§ 3531. The law never requires impossibilities.

57 Cal. 635.

§ 3532. The law neither does nor requires idle acts.

58 Cal. 98.

§ 3533. The law disregards trifles.

§ 3534. Particular expressions qualify those which are general.

§ 3535. Contemporaneous exposition is in general the best.

§ 3536. The greater contains the less.

§ 3537. Superfluity does not vitiate.

§ 3538. That is certain which can be made certain.

§ 3539. Time does not confirm a void act.

§ 3540. The incident follows the principal, and not the principal the incident.

§ 3541. An interpretation which gives effect is preferred to one which makes void.

§ 3542. Interpretation must be reasonable.

§ 3543. Where one of two innocent persons must suffer by the act of a third, he, by whose negligence it happened must be the sufferer.

Approved, March 21, 1872.

NEWTON BOOTH,
Governor.

The amendments which took effect July 1, 1874, and are so marked at the end of each section, were passed by Act of March 30, 1874, the closing paragraph of which is as follows : —

" All provisions of law inconsistent with the provisions of this act are hereby repealed, but no rights acquired or proceedings taken under the provisions repealed, shall be impaired or in any manner affected by this repeal ; and whenever a limitation or period of time is prescribed by such repealed provisions for acquiring a right or barring a remedy, or for any other purpose, has begun to run before this act takes effect, and the same or any other limitation is prescribed by this act, the time of limitation which shall have run when this act takes effect shall be deemed part of the time prescribed by this act.

" With relation to the laws passed at the present session of the Legislature, this act must be construed as though it had been passed at the first day of the present session, if the provisions of any law passed at the present session of the Legislature contravenes or is inconsistent with the provisions of this act, the provisions of such law must prevail.

" This act shall take effect on the first day of July, one thousand eight hundred and seventy-four.

" Approved, March 30, 1874."

APPENDIX.



APPENDIX.

An Act supplementary to an Act entitled "An Act to provide for the Incorporation of Colleges," approved April twentieth, eighteen hundred and fifty. [Stats 1871-2, pp. 10, 11.]

[Enacting clause.]

- SECTION 1.** Certain powers granted to grand lodges of benevolent and fraternal organizations.
2. Requirements in certain cases.
 3. Extension of powers.

SECTION 1. Whenever any benevolent, religious,¹ or fraternal organization, or society, having a grand lodge or other legislative head, duly organized and existing in this State, shall found and establish a college in this State, and shall incorporate or desire to incorporate the same under the act to which this act is supplementary, such organization or society shall have and may retain the right, through its grand lodge or other legislative head, not only to select and name the persons who, subject to the approval of the State Board of Education, shall form such corporation and be the first trustees thereof, but also to prescribe the terms of office of such trustees and provide for their classification, so that a portion thereof shall go out of office and their successors be elected at each annual session of such grand lodge or society; *provided*, however, that the terms of not more than one third of such trustees shall expire at the same time; and also to reserve to itself the power of electing the successors of such trustees as their terms expire. It may also provide that no person shall be a trustee of such corporation unless he be a member of such order, organization, or society, in good standing; and also require said board of trustees to report annually to the grand lodge or society founding the same the condition of the affairs of such corporation, and the amount and manner of its receipts and expenditures.

SEC. 2. Any corporation already formed under the act to which this act is supplementary of a college founded or estab-

¹ The word "religious" was inserted by amendment of February 7 1874. Stats. 1873-4, p. 85.

lished by the grand lodge or society of any benevolent, religious,¹ or fraternal organization in this State, may, by resolution of its board of trustees, a certified copy of which shall be filed, with its original certificate of incorporation, in the office of the secretary of state, surrender to the grand lodge or society which founded it the right to exercise all control over it provided by the first section of this act, and thereafter such grand lodge or society shall have the right to and may exercise the same control over such corporation as if the same had been specially formed under this act and the act to which this is supplementary.

SEC. 3. The corporation of any college established or founded by any such benevolent, religious, or fraternal organization or society, and incorporated as provided in this act and the act to which this is supplementary, may, in addition to holding the property necessary for its college purposes, also establish, own, and control, under the same management, a home for the maintenance and education of orphans, and an asylum for the care of the aged and indigent of the order or society founding such institution.

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved January 8, 1872.

An Act to amend an Act entitled, "An Act to provide for the Formation of Corporations for the Accumulation and Investment of Funds and Savings," approved April eleventh, eighteen hundred and sixty-two. [Stats. 1871-72, pp. 132-3.]

[Enacting clause.]

SECTION 1. Acts not lawful.

2. Increase of capital stock.

SECTION 1. Section eighteen of an act entitled "An act to provide for the formation of corporations for the accumulation and investment of funds and savings," approved April eleventh, eighteen hundred and sixty-two, is hereby amended so as to read as follows:

SEC. 18. It shall not be lawful for the directors to divide, withdraw, or in any way pay to the stockholders, or any of them, any part of the capital stock, nor to reduce the amount of the same, except as hereinafter provided.

¹ The word "religious" was inserted by amendment of February 7 1874.

SEC. 2. Section nineteen of the act mentioned in the first section of this act is hereby amended so as to read as follows :

SEC. 19. Whenever it is desired to increase the amount of capital stock, and in cases where the capital stock is partly but not all taken and paid in it is desired to reduce the same to not less than the amount paid in, a meeting of stockholders may be called, by a notice signed by at least a majority of the directors, and published at least sixty days in every issue of some newspaper published in the county where the principal place of business of the company is located, which notice shall specify the object of the meeting, the time and place where it is to be held, and the amount to which it is proposed to increase or reduce the capital stock, as the case may be ; and a vote of two thirds of all the shares of stock represented at the meeting shall be necessary to an increase or decrease of the amount of capital stock ; *provided*, that nothing in this act contained shall be held to authorize the release of any subscription to the capital stock, or the reduction of the amount of capital stock below the full amount that shall have been subscribed thereto.

SEC. 3. Section twenty of the act mentioned in the first section of this act is hereby amended so as to read as follows :

SEC. 20. If at any meeting so called a sufficient number of votes has been given in favor of increasing or reducing the amount of capital stock, a certificate of the proceedings, showing a compliance with these provisions, the amount of the capital actually paid in, and the amount to which the capital stock is to be increased or reduced, shall be made out, signed, and verified by the affidavit of the chairman and secretary of the meeting, certified by a majority of the directors, and filed as required by the second section of this act. When so filed the capital stock of the corporation shall be increased or reduced to the amount specified in the certificate.

SEC. 4. This act shall take effect from and after its passage.

Approved February 21, 1872.

An Act for the Protection of Miners. [Stats. 1871-72, p. 413.]

[Enacting clause.]

SECTION 1. Protection of miners.

2. Escape shaft.

3. Liabilities. Damages.

SECTION 1. It shall not be lawful for any corporation, association, owner, or owners of any quartz mining claims within the

State of California, where such corporation, association, owner, or owners employ twelve men daily, to sink down into such mine or mines any perpendicular shaft or incline beyond a depth from the surface of three hundred feet without providing a second mode of egress from such mine, by shaft or tunnel, to connect with the main shaft at a depth of not less than one hundred feet from the surface.

SEC. 2. It shall be the duty of each corporation, association, owner, or owners of any quartz mine or mines in this State, where it becomes necessary to work such mines beyond the depth of three hundred feet, and where the number of men employed therein daily shall be twelve or more, to proceed to sink another shaft or construct a tunnel so as to connect with the main working shaft of such mine as a mode of escape from underground accident or otherwise. And all corporations, associations, owner, or owners of mines as aforesaid, working at a greater depth than three hundred feet, not having any other mode of egress than from the main shaft, shall proceed as herein provided.

SEC. 3. When any corporation, association, owner, or owners of any quartz mine in this State shall fail to provide for the proper egress as herein contemplated, and where any accident shall occur, or any miner working therein shall be hurt or injured and from such injury might have escaped if the second mode of egress had existed, such corporation, association, owner, or owners of the mine where the injuries shall have occurred shall be liable to the person injured in all damages that may accrue by reason thereof; and an action at law in a court of competent jurisdiction may be maintained against the owner or owners of such mine, which owners shall be jointly or severally liable for such damages. And where death shall ensue from injuries received from any negligence on the part of the owners thereof by reason of their failure to comply with any of the provisions of this act, the heirs or relatives surviving the deceased may commence an action for the recovery of such damages as provided by an act entitled an act requiring compensation for causing death by wrongful act, neglect, or default, approved April twenty-sixth, eighteen hundred and sixty-two.

SEC. 4. This act shall take effect and be in force six months from and after its passage.

Approved March 16, 1872

42 Act supplemental to an Act entitled "An Act concerning Corporations," passed twenty-second April, one thousand eight hundred and fifty. [Stats. 1871-73, pp. 443-444.]

[Enacting clause.]

- SECTION 1.** Petition of shareholders. Publication of notice.
 2. Organizing. Meeting. Calling roll. Declaring result.
 3. Vacancies. Tellers.
 4. Certificate of election. Filing of certificate.
 5. Fees of county clerk.

SECTION 1. On petition of the majority of the shareholders of any corporation, formed for the purpose of mining, to the county judge of the county where said corporation has its principal place of business, verified by the signers, to the effect that they are severally the holders on the books of the company of the number of shares set opposite their signatures to the foregoing petition, the county judge shall issue his notice to the shareholders of said company that a meeting of the shareholders will be held, stating the time, not less than five nor more than ten days after the first publication of such notice, and the place of meeting within said county, and the object to be to take into consideration the removal of officers of said company; which notice, signed by the said county judge, shall be published daily in one or more daily newspapers published in said county for at least five days before the time for the meeting.

SEC. 2. At the time and place appointed by said notice those claiming to be shareholders who shall assemble shall proceed to organize by the appointment of a chairman and secretary, and thereupon those claiming to be shareholders shall present proof thereof, and only those showing a right to vote shall take part in the further proceedings. If it appears that at the time appointed, or within one hour thereafter, shareholders of less than one half the shares are present, no further proceedings shall be had, but the meeting shall be *ipso facto* dissolved; *provided*, however, that by a vote of the holders of the majority¹ of the capital stock of the corporations aforesaid, the board of trustees may be required to furnish to the meeting a written detailed statement and account of the affairs, business, and property of the corporation; but if the holders of a majority¹ of the shares are present they shall proceed to vote, the secretary calling the roll and the members voting yea or no, as the case may be. The secretary shall enter the same upon his list, and when he has added up the list and stated the result, he shall sign the same and hand it

¹ Amended from two thirds to a majority by Act of April 1, 1876, Stats 1875-76, p. 780.

to the chairman, who shall also sign the same and declare the result.

SEC. 3. If the result of the vote is that the holders of a majority of all the shares of the company are in favor of the removal of one or more of the officers of the company, the meeting shall then proceed to ballot for officers to supply the vacancies thus created. Tellers shall be appointed by the chairman, who shall collect the ballots and deliver them to the secretary, who shall count the same in open session, and having stated the result of the count in writing, shall sign the same and hand it to the chairman, who shall announce the result to the meeting.

SEC. 4. A report of the proceedings of the meeting shall be made in writing, signed by the chairman and secretary and verified by them, and delivered to the county judge, who shall thereupon issue to each person chosen a certificate of his election, and shall also issue an order requiring that all books, papers, and all property and effects be immediately delivered to the officers elect, and the petition and report, indorsed with the date and fact of the issuance of such certificate and order, shall be delivered to the county clerk to be by him filed in his office, and thereafter the persons thus elected officers shall be the duly elected officers and hold office until the next regular annual meeting, unless removed under the provisions hereof.

SEC. 5. For all services in these proceedings the county clerk shall receive ten dollars on the issuance of the notice and ten dollars on the issuance of the certificates.

SEC. 6. All acts or parts of acts conflicting with this act are hereby repealed.

SEC. 7. This act shall take effect immediately.

Approved March 21, 1872.

An Act to amend an Act entitled "An Act to provide for the Formation of Corporations for certain Purposes," approved April fourteenth, eighteen hundred and fifty-three. [Stats. 1871-72, pp 526-7.]

[Enacting clause.]

SECTION 1. Three or more persons may incorporate.

SECTION 1. Section two of said act is hereby amended so as to read as follows:

SEC. 2. Any three or more persons who may desire to form a company for any one or more of the purposes specified in the preceding section, may make, sign, and acknowledge before some officer competent to take the acknowledgment of deeds, and file in

the office of the county clerk of the county in which the principal place of business of the company is intended to be located, and certified copies thereof under the hand of the clerk and seal of the County Court of said county, in the office of the secretary of state, and in the office of the clerk of the several counties in which they may carry on their business, a certificate in writing, in which shall be stated the corporate name of the company, the object for which the company shall be formed, the amount of its capital stock, the time of its existence, not to exceed fifty years, the number of shares of which the stock shall consist, the number of trustees, and their names, who shall manage the concerns of the company for the first three months, and the names of the city, or town, and county in which the principal place of business of the company is to be located.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved March 23, 1872.

An Act supplemental to an Act entitled "An Act to authorize the Incorporation of Canal Companies, and to provide for the Construction of Canals and Ditches," approved April second, one thousand eight hundred and seventy. [Stats. 1871-72, pp. 732-733.]

[Enacting clause.]

SECTION 1. Formation of corporations.

2. Location of routes and sites.

3. Condemnation of land.

4. Bridges.

5. Applies only to Tehama County.

SECTION 1. Corporations may be formed under the provisions of the act entitled, "An act to provide for the formation of corporations for certain purposes," approved April fourteenth, eighteen hundred and fifty-three, and of the several acts amendatory thereof and supplementary thereto, for the following purposes, namely, the construction of canals, ditches, and flumes, for the transportation of passengers or of freight, or of both passengers and freight, for supplying water for irrigation, for procuring water power, for conveying water for mining or manufacturing or agricultural purposes, or for any or all of such purposes combined.

SEC. 2. Any company organized in pursuance of this act, or any company organized under any preëxisting acts for similar purposes, shall have power to locate and fix upon the line or route of its proposed ditch, canal, or flume, and select the site or sites of its proposed dams, embankments, and reservoirs, in conformity with the designation of its engineer or business manager.

SEC. 3. After the lapse of ten days from the filing of the report of the commissioners, if no motion to vacate the same is made, or if, being made, it is denied, or after the lapse of ten days from the filing of the report of a new commission, as provided in the act to which this act is supplemental, the county judge shall proceed to make an order upon the same, condemning so much of the land as he shall deem necessary for such canal, or ditch, or flume and other works; such order shall declare the sum to be paid by way of damages by such company, and shall award to such company the right to occupy such land and construct the proposed works upon payment by it to such owner or occupant of the sum so provided, which said order shall be duly filed in the office of the clerk of said County Court; and from the date of the payment of such sum to such owner or occupant, the said company shall have full right and authority to enter upon such land, and to erect and construct its proposed canal, ditch, or flume, and other works along the proposed route and upon its proposed site and sites, and shall have and enjoy the said land so condemned during the existence of such company; *provided*, that at any stage of the proceedings under this act subsequent to the presentation of the county judge of the petition mentioned in the act to which this is supplemental, and to the filing of the same in the office of the clerk of said court, said court or the judge thereof at chambers shall, by order or rule in that behalf made, authorize such company, if already in possession, to continue the use and possession of the land so sought to be condemned, or if not in possession, to take possession of and to use the same for the purposes for which it is sought to be condemned, during the pendency and until the final conclusion of such proceedings, and shall stay all actions and proceedings against such company on account thereof; *provided*, further, that such company shall pay into court a sufficient sum of money, or give security to be approved by said court or the judge thereof, to pay the said damages when ascertained, and such other damages as such owner or occupant of said premises shall sustain by reason of such entry upon and use of the same under and in pursuance of the order last aforesaid if said petition shall be denied or dismissed.

SEC. 4. Every company organized in pursuance of this act shall construct and keep in good repair at all times, for public use, the various bridges across any canal, ditch, or flume owned by it, required by the board of supervisors of the county wherein such crossing is situated, such bridge being on the line or crossing a public highway or county road, and necessary for public use.

SEC. 5. The provisions of this supplemental act shall apply to the county of Tehama only; but nothing herein contained shall be construed as repealing any part or portion of the act to which this act is supplemental, or of the act entitled, "An act to authorize the incorporation of canal companies and the construction of

canals," approved May fourteenth, eighteen hundred and sixty-two, but the said act shall be and remain in full force, except as said act shall be construed and modified in its application to the county of Tehama by the provisions of this act.

SEC. 6. This act shall take effect and be in force from and after its passage.

Approved March 30, 1872.

An Act in Relation to Foreign Corporations. [Stats. 1871-72,
p. 826.]

[Enacting clause.]

SECTION 1. A resident must be designated upon whom process may be served.

2. Penalty for failure to designate.

3. Privileges on compliance.

SECTION 1. Every corporation heretofore created by the laws of any other State and doing business in this State shall, within one hundred and twenty days after the passage of this act, and any corporation hereafter created and doing business in this State, within sixty days from the time of commencing to do business in this State, designate some person residing in the county in which the principal place of business of said corporation in this State is, upon whom process issued by authority of or under any law of this State may be served, and within the time aforesaid shall file such designation in the office of the secretary of state; and a copy of such designation, duly certified by said officer, shall be evidence of such appointment; and it shall be lawful to serve on such person so designated any process issued as aforesaid. Such service shall be made on such person in such manner as shall be prescribed in case of service required to be made on foreign corporations, and such service shall be deemed to be a valid service thereof.

SEC. 2. Every corporation created by the laws of any other State which shall fail to comply with the provisions of the first section of this statute shall be denied the benefit of the statutes of this State limiting the time for the commencement of civil actions.

SEC. 3. Every corporation created by the laws of any other State which shall comply with the provisions of the first section of this statute shall be entitled to the benefit of the statutes of this State limiting the time for the commencement of civil actions.

Approved April 1, 1872.

An Act to promote Irrigation. [Stats. 1871-2. pp. 945-948.]

[Enacting clause.]

- SECTION** 1. Petitions.
2. Publication.
3. Districts.
4. Approval of petitions.
5. Record.
6. Trustees.
7. By-laws.
8. Powers of trustees.
9. Reports.
10. Assessments for benefits.
11. Warrants.
12. Payments.
13. Subsequent assessments.
14. Lists.
15. What lists must contain.
16. Certified copies.
17. Liens.
18. Time for payments.
19. Collection by suit.
20. Work.
21. Accounts.
22. Property.
23. Condemnation.
24. Code of civil procedure.
25. Individual owners.
26. Privileges.

SECTION 1. Whenever the owners of any body of lands susceptible of one mode of irrigation or drainage desire to irrigate or drain the same, they may present to the board of supervisors of the county in which the lands or the greater portion thereof are situated, at a regular meeting of the board, a petition setting forth that they desire to adopt measures to irrigate the same, the description of the lands by legal subdivisions, the number of acres in the whole district, and the number of acres in each tract, with the names of the owners thereof and the names of three persons who may desire to serve as trustees for the first three months.

SEC. 2. The petition must be verified by the affidavit of one of the petitioners, and must be published for four weeks next preceding the hearing thereof, in some newspaper published in the county in which the lands are situated; or, if there is no newspaper published in the county, then it must be published in some newspaper having a general circulation in the county, and an affidavit of publication must be filed with such petition.

SEC. 3. When a district is situated partly in different counties, the trustees must, after the petition has been granted, forward a

copy thereof to the clerk of the board of supervisors of each of the counties in which any portion of the district may lie, and the board to which the same is forwarded must not allow another district to be formed within such district unless with the consent of the trustees thereof.

SEC. 4. If the board of supervisors find upon the hearing of the petition that the statements are correct, and that no land is improperly included or excepted from the district, they must note their approval on the petition, which approval must be signed by the president and attested by the clerk; and from and after the approval the district is duly formed, and the persons named in the petition are the trustees for the first three months, and until their successors are appointed.

SEC. 5. The petition must then be recorded by the county recorder in a book kept for the purpose.

SEC. 6. After the approval of the petition, the petitioners may make such by-laws as they deem necessary for future appointment of trustees and to effect the works of irrigation or drainage, keep the same in repair and operation, and for the control and management thereof, by the votes or consent of a majority of the owners of the lands within their district.

SEC. 7. The by-laws adopted must be signed by persons owning a majority of the land within the district, and must be recorded by the county recorder in the same book and immediately following the petition.

SEC. 8. The board thus formed have power to elect one of their number president thereof, and to employ engineers to survey, plan, locate, and estimate the cost of the works necessary for the irrigation, the water rights needed, and the land needed for right of way, including drains, canals, sluices, water gates, embankments, and material for construction, and to construct, maintain, and keep in repair all works necessary to the object in view.

SEC. 9. The board of trustees must report to the board of supervisors of the county, or if the district is in more than one county then to the board of supervisors of each county in which the district is situated, the plans of the work and estimates of the costs, together with estimates of the incidental expenses of superintendence, repairs, &c.

SEC. 10. The board by which the district was formed must appoint three commissioners, disinterested persons, resident of the county in which the district or some part thereof is situated, and must view and assess upon the lands situated within the district a charge proportionate to the whole expense and to the benefits which will result from such works, which charge must be collected and paid into the county treasury as hereinafter provided, and must be placed by the treasurer to the credit of the district, and paid out for the work of irrigation or drainage upon the warrants of the trustees, approved by the board of supervisors of the county.

SEC. 11. The warrants drawn by the trustees must, after they are approved by the board of supervisors, be presented to the treasurer of the county, and, if they are not paid on presentation, like indorsement must be made thereon, and they must be registered in like manner as county warrants.

SEC. 12. If a district is situated partly in different counties, the charge must be paid into the treasury of the county in which the particular tract may be situated.

SEC. 13. If the original assessment is insufficient to provide for the complete irrigation or drainage of the lands of the district, or if further assessments are from time to time required to provide for the protection, maintenance, and repair of the works, the trustees must present to the board of supervisors by which the district was formed a statement of the work to be done and its estimated cost, and the board must make an order directing the commissioners who made the original assessment, or other commissioners to be named in such order, to assess the amount of such estimated cost as a charge upon the lands within the district, which assessment must be made and collected in the same manner as the original assessment.

SEC. 14. The commissioners appointed by the board of supervisors must make a list of the charges assessed against each tract of land.

SEC. 15. The list must contain :

1. A description by legal subdivisions or natural boundaries, of each tract assessed.
2. The number of acres in each tract.
3. The names of the owners of each tract, if known, and if unknown, that fact.
4. The amount of the charge assessed against each tract.

SEC. 16. The list so made must be filed with the county treasurer of the county, or if the district is partly situated in different counties, then the original list must be filed in the county first in order under alphabetical arrangement, and copies thereof, certified by the commissioner, must be filed with the treasurer of each of the other counties.

SEC. 17. From and after the filing of the list, or certified copy thereof, the charges assessed upon any tract of land within the county constitutes a lien thereon.

SEC. 18. The lists thus prepared must remain in the office of the treasurer for thirty days, or longer if ordered by the board of trustees, and during the time they so remain any person may pay the amount of the charge against any tract to the treasurer, without cost.

SEC. 19. If at the end of thirty days, or of the longer time fixed by the trustees, all of the charges have not been paid, the treasurer must return the lists to the district attorney, who must at once proceed by civil action to collect such charges.

SEC. 20. The work must be executed under the direction and in the manner prescribed by the board of trustees.

SEC. 21. The board must keep accurate accounts of all expenditures, which accounts, and all contracts that may be made by them, are open to the inspection of the board of supervisors and every person interested.

SEC. 22. The trustees may acquire, by purchase, all property necessary to carry out and maintain the system of irrigation or drainage provided for.

SEC. 23. The trustees may acquire by condemnation:

1. The right to the use of any running water not already used for culinary or domestic purposes, or for irrigating, milling, or mining purposes.

2. The right of way for canals, drains, embankments, and other work necessary, and may take materials for the construction, maintenance, and repair thereof, from lands outside of as well as within the limits of the district.

SEC. 24. The provisions of Title VII., Part III., of the Code of Civil Procedure are applicable to, and the condemnation herein provided for must be made thereunder.

SEC. 25. Whenever any district susceptible of one mode of irrigation or drainage is entirely owned by parties who desire to irrigate or drain the same, and to manage the irrigation or drainage without the intervention of trustees or the establishment of by-laws, they may file the petition provided for in sections one and two, and must state therein that they intend to undertake the irrigation or drainage on their own responsibility.

SEC. 26. If the petition is granted, the owners of the lands have all the rights, immunities, and privileges granted to boards of trustees, and in all proceedings the names of the owners may be used instead of the names of trustees.

SEC. 27. This act shall not be so construed as applying to the counties of Fresno, Kern, Tulare, and Yolo.

SEC. 28. This act, and the provisions of the title of the Code of Civil Procedure herein referred to, so far as proceedings under this act are to be had, shall be in force from and after the passage of this act.

Approved April 1, 1872.

An Act in Relation to the Care of Orphan and Abandoned Children. [Stats. 1873-4, pp. 297-8.]

[Enacting clause.]

- SECTION 1.** Names must be published quarterly.
2. Abandonment by parents a misdemeanor.
3. Child remaining in asylum one year is deemed abandoned.
4. Managers entitled to guardianship of abandoned child.

SECTION 1. It shall be the duty of the officers or managers of each and every orphan asylum in this State, to publish, on the first of January, April, July, and October, in each year, in some newspaper of general circulation published in the county where such asylum shall be situated, a notice, giving the name, age, and sex of each child received into such orphan asylum as an orphan since the last quarterly publication, together with such other information as would be likely to lead to the identification of such child by its relations or friends. Such notice must be published for at least four weeks, if in a weekly, and for at least ten days, if in a daily newspaper.

SEC. 2. Any parent who shall knowingly and wilfully abandon, and who, having the ability so to do, shall fail, neglect, or refuse to maintain his or her minor child under the age of fourteen years, shall be deemed guilty of a misdemeanor, and may be prosecuted and punished therefor, and shall forfeit the guardianship of such child. Any person who shall falsely, knowing the same to be false, represent to any manager, officer, or agent of any orphan asylum or charitable association for the care of orphans, that any child for whose admission into such asylum application is made, is an orphan, shall be deemed guilty of a misdemeanor, and punished accordingly.

SEC. 3. Any parent or guardian who shall knowingly permit his or her child or ward to remain for the space of one year in any orphan asylum in this State, wherein such child shall be supported by charity, and who, during such period, shall fail or neglect to give notice in writing to the managers or officers of such asylum that he or she is such parent or guardian, shall be deemed to have abandoned, and shall forever forfeit all right to the guardianship, care, custody, and control of such child.

SEC. 4. The officers or managers of the orphan asylum having any such abandoned child in its care, shall have the preferred right to the guardianship of such child, and upon application to the courts in the manner prescribed by law, shall be duly appointed such guardians, and shall have letters of guardianship.

SEC. 5. This act shall take effect from and after its passage.

Approved March 7, 1874.

See Act of March 25 1880.

An Act relating to Conveyances of Real Estate. [Stats. 1873-4 pp. 345-6.]

[Enacting clause.]

- SECTION 1. Conveyance by party who has changed his name.
2. Conveyance to be indexed in both names.
3. Duty of recorders.

SECTION 1. Any person in whom the title of real estate is vested, who shall afterwards, from any cause, have his or her name changed, shall, in any conveyances of said real estate so held, set forth the name in which he or she derived title to said real estate.

SEC. 2. All conveyances of real estate, except patents issued by the State as a party made by any public officer pursuant to any law of this State, shall, when recorded by the county recorder, be by him alphabetically indexed in the "Index of Grantors," both in the name of the officer making such sale, and in the name of the person owning the property so sold.

SEC. 3. It is hereby made the duty of all county recorders to alphabetically index, in the "Index of Grantors," both in the name by which title was acquired, and also by which the same was conveyed, all conveyances referred to in section one of this act.

SEC. 4. This act shall be in force from and after its passage.

Approved March 11, 1874.

An Act supplementary to an Act entitled an Act to authorize the Formation of Corporations to provide the Members thereof with Homesteads, or Lots of Land suitable for Homesteads, approved May twentieth, eighteen hundred and sixty-one. [Stats. 1873-4, p. 525.]

[Enacting clause.]

- SECTION 1. Extending corporate existence.
2. Extension, how made.

SECTION 1. Any corporation formed under the act to which this act is supplemental, whose period of existence is not stated in its articles of incorporation to be ten years, may continue its corporate existence for ten years from the date of filing its articles of incorporation, upon complying with the provisions of this act.

SEC. 2. Any such corporation existing on the first day of January eighteen hundred and seventy-four, may, at any time before

its period of existence, as stated in its articles of incorporation, shall expire, continue its existence, as stated in section one of this act, by a majority vote of its board of trustees at any meeting of such board, or by a vote of a majority of the stockholders as the board of trustees may elect. A certificate of the action of the directors, signed by them and their secretary, when the election is made by their vote, or upon the written consent of the stockholders or members, or a certificate of the proceedings of the meeting of the stockholders or members, when such election is made at any such meeting, signed by the chairman and secretary of the meeting and a majority of the directors, must be filed in the office of the clerk of the county where the original articles of incorporation are filed, and a certified copy thereof must be filed in the office of the secretary of state; and thereafter the corporation shall continue its existence under the provisions of this act, and shall possess all the rights and powers, and be subject to all the obligations, restrictions, and limitations prescribed by the act of which this is supplementary.

SEC. 3. This act shall take effect from and after its passage.

Approved, March 23, 1874.

An Act to enable Certain Parties therein named to alienate or encumber Homesteads. [Stats. 1873-4, pp. 582-3.]

[Enacting clause.]

SECTION 1. Sale of homestead of insane person.

2. What notice given.

3. Application, when filed.

4. Order of court.

5. Fees of public administrator.

SECTION 1. In case of a homestead, if either the husband or wife shall become hopelessly insane, upon application of the husband or wife, not insane, to the Probate Court of the county in which said homestead is situated, and upon due proof of such insanity, the court may make an order permitting the husband or wife, not insane, to sell and convey, or mortgage such homestead.

SEC. 2. Notice of the application for such order shall be given by publication of the same, in a newspaper published in the county in which such homestead is situated, if there be a newspaper published therein, once each week for three successive weeks prior to the hearing of such application, and a copy of such notice shall also be served upon the nearest male relative of such insane husband or wife, resident in this State, at least three weeks prior

to such application; and in case there be no such male relative known to the applicant, a copy of such notice shall be served upon the public administrator of the county in which such homestead is situated; and it is thereby made the duty of such public administrator, upon being served with a copy of such notice, to appear in court and see that such application is made in good faith, and that the proceedings thereon are fairly conducted.

SEC. 3. Thirty days before the hearing of any application under the provisions of the act, the applicant shall present and file in the court in which such application is to be heard, a petition for the order mentioned in the first section of this act, subscribed and sworn to by the applicant, setting forth the name and age of the insane husband or wife; the number, age, and sex of the children of such insane husband or wife; a description of the premises constituting the homestead; the value of the same; the county in which it is situated, and such facts in addition to that of the insanity of the husband or wife relating to the circumstances and necessities of the applicant and his or her family, as he or she may rely upon in support of the petition.

SEC. 4. If the court shall make the order provided for in the first section of this act, the same shall be entered upon the minutes of the court, and thereafter any sale, conveyance, or mortgage made in pursuance of such order, shall be as valid and effectual as if the property affected thereby was the absolute property of the person making such sale, conveyance, or mortgage, in fee simple.

SEC. 5. For all services rendered by any public administrator, under the provisions of this act, he shall be allowed a fee not exceeding twenty dollars, to be fixed by the court, and the same shall be taxed as costs against the person making application for the order herein provided for.

SEC. 6. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

SEC. 7. This act shall take effect and be in force from and after its passage.

Approved, March 25, 1874.

An act relating to Mutual, Beneficial, and Relief Associations.
[Stats. 1873-74, pp. 745-6.]

[Enacting clause.]

- SECTION 1. Associations may be formed. Number of members.
2. Formed by filing certificate.
3. Assessments.

SECTION 4. May sue and own property.**5. By-laws.****6. Existing associations may avail themselves of this act.**

SECTION 1. Associations may be formed for the purpose of paying to the nominee of any member, a sum upon the death of said member, not exceeding three dollars for each member of such association. No such association shall exceed in number one thousand persons.

SEC. 2. Such association shall be formed by filing a verified certificate in the office of the clerk of the county in which the principal place of business shall be situated, and filing a like certificate in the office of the secretary of the state; such certificate shall state the general objects of the association, its principal place of business, and the names of the officers selected to hold office for the first three months, and shall be signed by said officers, and verified by at least three of them.

SEC. 3. Said associations, upon the death of each member, may levy an assessment upon each member living at the time of the death, not exceeding three dollars for each member, and collect the same, and pay the same to the nominee of such deceased; and may also provide the payment of such annual payments of members as may be deemed best. Such annual assessment upon any one member not to be raised above the annual assessment established at the time such member joined such association.

SEC. 4. Such association, by its name, may sue and be sued, and may loan such funds as it may have on hand, and may own sufficient real estate for its business purposes, and such other real estate as it may be necessary to purchase on foreclosure of its mortgages; *provided*, such real estate so obtained through foreclosure shall be sold and conveyed within five years from the day title is obtained, unless the District Court of the proper district shall, upon petition and good cause shown, extend the time.

SEC. 5. Such association may make such by-laws, not inconsistent with the laws of this State, as may be necessary for its government, and for the transaction of its business, and shall not be subject to the provisions of the general insurance laws.

SEC. 6. All associations heretofore formed for the objects contemplated by this act, and now in operation, may avail themselves of its provisions by filing the certificate provided for in section one; *provided*, that such societies shall not have a greater membership than three thousand.

SEC. 7. This act shall take effect immediately.

Approved March 28, 1874.

An Act for the Better Protection of the Stockholders in Corporations formed under the Laws of the State of California, for the purpose of Carrying on and Conducting the Business of Mining.
[Stats. 1873-74, pp. 866-867.]

[Enacting clause.]

SECTION 1. Books to be open for examination of stockholders; written statements semi-annually.

2. Stockholders to have the right of examining property.

3. Trustees liable to fine and expenses.

SECTION 1. It shall be the duty of the secretary of every corporation formed under the laws of the State of California, for the purpose of mining, to keep the books of such corporation, as prescribed by its by-laws, provided such by-laws are not inconsistent with the laws of this State. The books of such corporation shall be produced for examination and inspection during the hours of business, every day in the year, Sundays and legal holidays excepted, upon the demand of any stockholder, holding and presenting a certificate of stock in such corporation, either in his own name or properly indorsed; and the secretary of such corporation shall be required upon the demand of any stockholder holding stock in such corporation, to the amount of five hundred dollars, par value, to have the books of the corporation written up at the end of each month, and shall make out a balance sheet showing the correct financial condition of the corporation; and on or before the tenth day of January and July of each year, he shall make out a written statement, showing all the business and financial transactions of the corporation for the six months preceding, which statement shall also contain a full description of all property of the corporation, and the character and extent of the same, and such statements, together with all papers and records of the corporation, shall be open to examination and inspection upon any demand by such stockholder. All demands of stockholders, as specified in this section, shall be made to the secretary, at the office of the corporation, where its principal place of business is located.

SEC. 2. Any owner of stock, of the par value of \$500, in any of the corporations mentioned in section one of this act, shall at all hours of business or labor on or about the premises or property of such corporation, have the right to enter upon such property and examine the same, either on the surface or underground. And it is hereby made the duty of any and all officers, managers, agents, superintendents, or persons in charge, to allow any such stockholder to enter upon and examine any of the property of such corporation, at any time during the hours of business or labor. And the presentations of certificates of stock in the corporation of the par value of \$500, to the officer or person in charge, shall be

prima facie evidence of ownership and right to enter upon or into, and make examinations of the property of the corporation.

SEC. 3. The violations of any of the provisions of sections one and two of this act, shall subject the trustees of the corporation to a fine of two hundred dollars and costs of suit, and the expenses of the stockholders so refused, in travelling to and from the property, which may be recovered in any court of competent jurisdiction, either in the county where the property is situated, or in the county where the office and principal place of business of the corporation is situated, which said fine shall be imposed and collected for, and paid over to the person so refused, together with all moneys collected for the said travelling expenses.

SEC. 4. All acts in conflict with the provisions of this act are hereby repealed.

Approved March 30, 1874.

See Act of 1880, p. 491.

An Act concerning Corporations and Persons engaged in the Business of Banking. [Stats. 1875-76, p. 729.]

[Enacting clause.]

SECTION 1. Banks to publish semi-annual statements.

2. Assets and liabilities to be described.
3. Liability for making false statement.
4. Foreign banking corporations.
5. Recorder to keep records.
6. Fees of recorder.

SECTION 1. Every corporation, and all persons, and every person hereafter doing a banking business in this State shall, in January and July of every year, publish in at least one newspaper published in the county in which the principal office of such corporation may be situated, or in which said persons or person may reside, and also file for record, in the recorder's office of said county, a sworn statement, verified, in the case of any such corporation, by its president or manager, and by its secretary or cashier, and in the case of any such individual or individuals, by him or them, of the amount of capital actually paid into such corporation, or into such banking business; *provided*, that nothing shall be deemed capital actually paid in except money *bona fide* paid into the treasury of such bank, and under no circumstances shall the promissory note, check, or other obligation of any director or stockholder, or of the proprietors or proprietor of any such bank, be treated, computed, or in any manner considered any part of such actually paid in capital. If no newspaper of general circulation be published in the aforementioned county,

then and in that case such publication of said statement shall be made in at least one newspaper of general circulation published in the city and county of San Francisco, and in one newspaper of general circulation published in the city and county of Sacramento.

SEC. 2. Every corporation and all persons and every person hereafter doing a banking business in this State shall likewise publish in such newspaper or newspapers, and shall also file for record, in the recorder's office of said county, in January and July of each year, a like sworn statement of the actual condition and value of its assets and liabilities, and where said assets are situated.

SEC. 3. The directors of every such corporation which shall publish or file for record, as aforesaid, a false statement of the amount of capital actually and *bonâ fide* paid into such corporation, or a false statement of the actual condition and value of its assets and liabilities, or as to where said assets are situated, shall be jointly and severally liable to any person thereafter dealing with such corporation to the full extent of such dealing; and no corporation, and no person or persons who fail to comply with the provisions or any of the provisions of this law, shall maintain or prosecute any action or proceeding in any of the courts of this State until they shall have first duly filed the statements herein provided for, and in all other respects complied with the provisions of this law; nor shall any assignee or assignees of any such corporation or person whose assignment shall be made subsequent to any such failure to comply with the provisions of this law, maintain any action or proceeding in any court of this State until his or their assignor or assignors shall have first duly complied with the provisions of this law.

SEC. 4. Where any of such banking corporations shall be foreign, the statements hereinbefore provided for shall be verified by the agent or manager of the business of such corporation resident in this State, who shall be subject to the same liabilities herein provided as against directors of any such banking corporation, and also as against every such bank officer.

SEC. 5. The recorder of each county of this State shall keep two sets of well-bound books for the record of the sworn statements herein provided for, respectively, one of which sets of books shall be labelled, "Statements of Banking Capital," and the other, "Statements of Banking Assets," and said recorder shall, upon the payment of his fees for the same, record separately said respective sworn statements in its appropriate book, and shall keep a separate index of each of said sets of books. Said original sworn statements need not be acknowledged in order to be recorded as aforesaid, but must be verified as aforesaid before some judge or officer of this State authorized to take affidavits to be used before any court in this State, and shall always remain and be kept on file in the office of said recorder.

SEC. 6. The recorder of every county in this State shall receive, for recording any of the sworn statements herein provided for, for every folio, twenty-five cents; and for noting on any such sworn statement the time when and the place where recorded, twenty-five cents; and for certified copies of such sworn statements, to which any one paying for the same shall be entitled, twenty-five cents per folio.

SEC. 7. This act shall take effect from and after its passage.

Approved April 1, 1876.

An Act concerning Lodging-houses and Sleeping Apartments within the Limits of Incorporated Cities. [Stats. 1875-6, p. 759.]

[Enacting clause.]

- SECTION 1. Number of cubic feet for each person.
2. Misdemeanor.
3. Arrest.
4. Buildings excepted.

SECTION 1. Every person who owns, leases, lets, or hires, to any person or persons, any room or apartment in any building, house, or other structure, within the limits of any incorporated city, or city and county, within the State of California, for the purpose of a lodging or sleeping apartment, which room or apartment contains less than five hundred cubic feet of space, in the clear, for each person so occupying such room or apartment, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than fifty (50) dollars or more than five hundred (500) dollars, or by imprisonment in the county jail, or by both such fine or imprisonment.

SEC. 2. Any person or persons found sleeping or lodging, or who hires or uses for the purpose of sleeping in, or lodging in, any room or apartment which contains less than five hundred (500) cubic feet of space, in the clear, for each person so occupying such room or apartment, shall be deemed guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not less than ten (10) or more than fifty (50) dollars, or by both such fine and imprisonment.

SEC. 3. It shall be the duty of the chief of police (or such other person to whom the police powers of a city are delegated), to detail a competent and qualified officer or officers of the regular force to examine into any violation of any of the provisions of this act, and to arrest any person guilty of any such violation.

SEC. 4. The provisions of this act shall not be construed to apply to hospitals, jails, prisons, insane asylums, or other public institutions.

SEC. 5. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

SEC. 6. This act shall take effect and be in force from and after its passage.

Approved April 3, 1876.

An Act Relative to Apprentices and Masters. [Stats. 1875-6, pp. 842-845; as amended Stats. 1880, p. 177.]

[Enacting clause.]

SECTION 1. Minors may be apprenticed.

2. By whom.
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18. Parties to indenture liable for breach of covenant
19. Encouragement of runaway a misdemeanor
20. On removal of master from the State.

SECTION 1. All minors, at the age of fourteen years, may be bound by covenant or indenture, in conformity with the stipulations herein specified, to any mechanical trade or art, or the occupation of farming, as apprentices; males, to the age of twenty-one years, and females to the age of eighteen.

SEC. 2. Minors, at or above the age of fourteen years, may be bound by the father, or, in case of his death, incompetency, or where he shall have wilfully abandoned his family for one year without making suitable provision for their support, or has become an habitual drunkard, vagrant, &c., then by their mother, or by their legal guardian; and if illegitimate, they may be bound by their mother; and if they have no parent competent to act, and no guardian, they may bind themselves, with the approbation of the Superior Court of the county where they reside but the power of a mother to bind her children, whether legitimate or illegiti-

mate, shall cease upon her subsequent marriage, and shall not be exercised by herself or her husband, at any time during her marriage, without the approval of the Superior Court of the county wherein she or he resides.

SEC. 3. In all cases, the consent of the minor, personally, is required as a party to the covenant, and should be so expressed in the indenture, and testified by his or her signing the same.

SEC. 4. Indentures shall be signed, sealed, and delivered in duplicate copies, in the presence of all the parties concerned, and when made with the approbation of the Superior Court, or the judge thereof, in vacation, such approbation shall be certified in writing indorsed upon each copy of the indenture. One copy of the indenture shall be kept for the use of the minor by his parent or guardian (when executed by them, respectively), but when made with the approbation of the court, it shall be deposited in the safe keeping of the clerk of said court for the use of the minor. The other copy shall be held by the master, and delivered up by him to the apprentice at the expiration of his term of service.

SEC. 5. No indenture of apprentice, made in pursuance of this act, shall bind the minor after the death of his master, but the apprenticeship shall be thenceforth discharged, and the minor may be bound out anew.

SEC. 6. Facts of incapacity, desertion, drunkenness, vagrancy, &c., shall be decided in the said court by a jury, before the indenture shall take effect, and an indorsement on the indenture, under seal of the court, that the charge or charges are proved, shall be sufficient evidence of the mother's power to give such consent; but if the jury do not find the charge or charges to be true, the person at whose instance such proceedings may have been had shall pay all costs attending the same.

SEC. 7. The executor who, by the will of the father, is directed to bring up his child to a trade or calling, shall have power to bind such by indenture in like manner as the father, if living, might have done.

SEC. 8. When any minor who is poor, homeless, chargeable to the county, or an outcast, has no visible means of obtaining an honest livelihood, it shall be lawful for the said court to bind such apprentice until, if a male, he arrives at the age of twenty-one, and if a female, to the age of eighteen.

SEC. 9. It shall be unlawful for any master to remove an apprentice out of this State; and in all indentures by the said court for binding out any orphan or homeless minor as an apprentice, there shall be inserted, among other covenants, a clause to the following effect: that the master to whom such minor shall be bound shall cause the same to be taught to read and write, and the ground rules of arithmetic, and the ratio and proportion, and shall give him requisite instruction in the different branches of

his trade or calling; and at the expiration of his term of service, shall give him two full new suits of clothes and the sum of fifty dollars, gold; and if a female, she shall have two full new suits of clothes and the sum of fifty dollars, gold; the two new suits in either case to be worth at least sixty dollars, gold.

SEC. 10. All considerations of money or clothes paid or allowed by the master, in conformity with the foregoing section, are the sole property of the apprentice, and to whom the master is accountable for the same, and he shall pay or donate into the hand of the apprentice alone.

SEC. 11. Parents and guardians and the said court shall, from time to time, inquire into the treatment of the children bound by them respectively, or with their approbation; and the judges of the said courts shall be responsible for the charge of indentured apprentices bound by the approbation of their predecessors in office, and defend them from all cruelty, neglect, breach of contract, or misconduct on the part of their masters.

SEC. 12. The age of every apprentice shall be inserted in the indenture, and all indentures entered into, otherwise than as is herein provided, shall be, as to all apprentices under age, utterly void.

SEC. 13. The County Court shall hear the complaints of apprentices who reside within the county, against their masters, alleging undeserved or immoderate correction, insufficient allowance of food, raiment, or lodging, want of instruction in the different branches of their trade or calling, or that they are in danger of being removed out of the State, or any violation of the indenture of apprenticeship; and the court may hear and determine such cases, and make such order therein as will relieve the party injured in the future.

SEC. 14. The Superior Court shall have power, where circumstances require it, to discharge an apprentice from his apprenticeship, and in case any money or other thing has been paid, or contracted to be paid by either party, in relation to such apprenticeship, the court shall make such order concerning the same as shall seem just and reasonable. If the apprentice so discharged shall have been originally bound by the Superior Court, it shall be the duty of the court, if found necessary, again to bind such apprentice, if under age.

SEC. 15. Every master shall be liable to an action on the indenture for the breach of any covenant on his part therein contained; and all damages recovered in such action, after deducting the necessary charges in prosecuting the same, shall be the property of the minor, and shall be applied and appropriated to his use by the person who shall recover the same, and shall be paid to the minor, if a male, at the age of twenty-one years, and if a female, at the age of eighteen years. If such action is not brought during the minority of such apprentice, it may be commenced in his own

name at any time within six months after coming of age, but not later than two years.

SEC. 16. An apprentice who shall be guilty of any gross misbehavior, or refusal to do his duty, or wilful neglect thereof, shall render himself liable to the complaint of the master in the Superior Court of the county wherein he resides, which complaint shall set forth the circumstances of the case; and to said complaint shall be attached a citation, signed by the clerk of said court, requiring the apprentice and all persons who have covenanted in his behalf, to appear and answer to such complaint, which complaint and citation shall be served on them in the usual manner of serving civil process.

SEC. 17. The court shall proceed to hear and determine the cause, and after a full hearing of the parties, or if the adverse party shall neglect to appear after due notice, the court may render judgment or decree that the master be discharged from the contract of apprenticeship, and for the costs of suit; such costs to be recovered of the parent or guardian of the minor, if there be any who signed the indenture, and execution therefor issued accordingly; and if there be no parent or guardian liable for such costs, execution may be issued therefor against the minor, or the amount thereof may be recovered in an action against him after he shall arrive at full age.

SEC. 18. The parties to an indenture shall also be liable to the master in an action on the indenture, for the breach of any covenant on their part therein contained, committed before the master was so discharged from such indenture.

SEC. 19. It shall be unlawful for any person to entice, counsel, or persuade to run away any apprentice, or employ, harbor, or conceal such, knowing said apprentice to be a runaway; and the parties so offending shall be guilty of a misdemeanor, and be subject to a fine of not less than fifty and not more than one hundred dollars, to be recovered by the master in any court having jurisdiction thereof.

SEC. 20. Whenever any master of an apprentice shall wish to remove out of this State, or to quit his trade or business, he shall appear with his apprentice before the Superior Court of the proper county, and if the court be satisfied that the master has done justice to the said apprentice, for the time he has had charge of the same, such court shall have power to discharge such apprentice from the service of such master, and again bind him, if necessary, to some other person.

SEC. 21. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

SEC. 22. This act shall take effect and be in force from and after its passage.

[Approved April 3, 1876. Amended April 9, 1880.]

An Act amendatory of an Act entitled "An Act for the better Protection of the Stockholders in Corporations, formed under the Laws of the State of California, for the purpose of Carrying on and Conducting the Business of Mining," approved March thirtieth, eighteen hundred and seventy-four."

SECTION 1. It shall be the duty of the secretary of every corporation, formed under the laws of this State for the purpose of mining, to keep a complete set of books, showing all receipts and expenditures of such corporation, the sources of such receipts, and the object of such expenditures, and also all transfers of stock. All books and papers shall at all times, during business hours, be open to the inspection of any *bonâ fide* stockholder; and if any stockholder shall at any time so request, it shall be the duty of the secretary to attend at the office of said company at least one hour in the day out of regular business hours, and exhibit such books and papers of the company as such stockholder may desire, who shall be entitled to be accompanied by an expert; and he shall also be entitled to make copies or extracts from any such books or papers. It shall be the duty of the directors, on the first Monday of each and every month, to cause to be made an itemized account or balance sheet for the previous month, embracing a full and complete statement of all disbursements and receipts, showing from what sources such receipts were derived, and for what and to whom such disbursements or payments were made, and for what object or purpose the same was made; also all indebtedness or liabilities incurred or existing at the time, and for what the same were incurred, and the balance of money, if any, on hand. Such account or balance sheet shall be verified under oath by the president and secretary, and posted in some conspicuous place in the office of the company. It shall be the duty of the superintendent, on the first Monday of each month, to file with the secretary an itemized account, verified under oath, showing all receipts and disbursements made by him for the previous month, and for what said disbursements were made. It shall also be the duty of the superintendent to file with the secretary a weekly statement, under oath, showing the number of men employed under him and for what purpose, and the rate of wages paid to each one. He shall attach to such account a full and complete report, under oath, of the work done in said mine, the amount of ore extracted, from what part of the mine taken, the amount sent to mill for reduction, its assay value, the amount of bullion received, the amount of bullion shipped to the office of the company or elsewhere, and the amount, if any, retained by the superintendent. It shall also be his duty to forward to the office of the company a full report, under oath, of all discoveries of ores or mineral-bearing quartz made in said mine, whether by boring, drifting, sinking, or otherwise, together with the assay value thereof. All accounts, reports,

and correspondence from the superintendent shall be kept in some conspicuous place in the office of said company, and be open to the inspection of all stockholders.

SEC. 2. Any *bonâ fide* stockholder of a corporation formed under the laws of this State for the purpose of mining, shall be entitled to visit, accompanied by his expert, and examine the mine or mines owned by such corporation, and every part thereof, at any time he may see fit to make such visit and examination; and when such stockholder shall make application to the president of such corporation, he shall immediately cause the secretary thereof to issue and deliver to such applicant an order, under the seal of the corporation, directed to the superintendent, commanding him to show and exhibit such parts of said mine or mines, as the party named in said order may desire to visit and examine. It shall be the duty of the superintendent, on receiving such order, to furnish such stockholder every facility for making a full and complete inspection of said mine or mines, and of the workings therein; it shall be his duty also to accompany said stockholder either in person, or to furnish some person familiar with said mine or mines to accompany him in his visit to and through such mine or mines, and every part thereof. In case of the failure or refusal of the superintendent to obey such order, such stockholder shall be entitled to recover, in any court of competent jurisdiction, against said corporation, the sum of one thousand dollars, and travelling expenses to and from said mine as liquidated damages, together with costs of suit. In case of such refusal, it shall be the duty of the directors of such corporation forthwith to remove the officer so refusing, and thereafter he shall not be employed, directly or indirectly, by such corporation, and no salary shall be paid to him.

SEC. 3. In case of the refusal or neglect of the president to cause to be issued by the secretary the order in the second section of this act mentioned, such stockholder shall be entitled to recover against said president the sum of one thousand dollars and costs, as provided in the last section. In case of the failure of the directors to have the reports and accounts current made and posted as in the first section of this act provided, they shall be liable, either severally or jointly, to an action, by any stockholder in any court of competent jurisdiction complaining thereof, and on proof of such refusal or failure, such complaining stockholder shall recover judgment for one thousand dollars liquidated damages, with costs of suit.

SEC. 4. All acts and parts of acts, so far as they do conflict with this act, are hereby repealed. [In effect April 23, 1880.]

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